

A

S E Q U E L,

Sc. Sc.

SEEQUEL

TO THE

ACCOUNT OF THE PROCEEDINGS

IN THE

UNIVERSITY OF CAMBRIDGE

AGAINST THE

A

AUTHOR OF A RAMPHLET

ENTITLED

PEACE AND UNION;
SEEQUEL

THE APPLICATION TO THE COURT OF KING'S BENCH

A REVIEW OF SIMILAR CASES IN THE UNIVERSITY

AND REFLECTIONS ON THE IMPORTANCE OF RELIGIOUS PERSE

CUTION, AND THE IMPORTANCE OF FREE ENGLISH

H. W. FRIEND,

CITIZEN OF CAMBRIDGE, FELLOW OF JESUS COLLEGE

AND M. A.

LONDON

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CONTAINING
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AND REFLECTIONS ON THE IMPOLICY OF RELIGIOUS PERSE-
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By W. F R E N D,
CITIZEN OF CANTERBURY, FELLOW OF JESUS COLLEGE,
CAMBRIDGE, AND M. A.

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PRINTED FOR THE AUTHOUR;
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1795.

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P R E F A C E.

APRINCIPLE of duty alone impells me to obtrude myself farther on the publick notice, by giving this Second to the Proceedings, which immediately followed the publication of my pamphlet entitled Force and Union: and I am fully aware of the complaints, that will be made upon this occasion by every enemy to publick discussion and free enquiry. It will be urged, that mine is not a new case; that in every age they who have uttered sentiments disagreeable to the majority of their countrymen have suffered from their resentment; that the feelings of an individual are of little or no consequence to the publick at large; that I have by my own fault been exposed to trouble; that if I had been content to keep my sentiments to myself, and to go on in the usual train with others, I might have been a sharer in their good fortune; and that men, as long as they are in possession of power, and find their interest involved in the system which any one pretends to condemn, will not be in the least affected by arguments derived only from reason and justice. Yet these inductions, which have been frequently made in my hearing, seem to me to be of little weight. If I cannot convince the majority of the injustice of its conduct, I am

P R E F A C E.

A PRINCIPLE of duty alone impells me to obtrude myself farther on the publick notice, by giving this Sequel to the Proceedings, which immediately followed the publication of my pamphlet entitled Peace and Union: and I am fully aware of the complaints that will be made upon this obtrusion by every enemy to publick discussion and free enquiry. It will be urged, that mine is not a new case; that in every age they who have uttered sentiments disagreeable to the majority of their countrymen have suffered from their resentment; that the feelings of an individual are of little or no consequence to the publick at large; that I have by my own fault been exposed to trouble; that if I had been content to keep my sentiments to myself, and to go on in the usual train with others, I might have been a sharer in their good fortune; and that men, as long as they are in possession of power, and find their interest involved in the system which any one presumes to condemn, will not be in the least affected by arguments derived only from reason and justice. Yet these insinuations, which have been frequently made in my hearing, seem to me to be of little weight. If I cannot convince the majority of the injustice of its conduct, I am

still bound to shew to those persons, who have been interested in my cause, that I did not act upon slight grounds in determining, that it should be investigated in a superior court of judicature; and though I have not succeeded in my attempt, there will, I trust, be found in the following pages, sufficient proofs of the points intended to be established; namely, that mine is the only cause of the same nature, which was ever tried in a criminal court; and that the whole course of the proceedings was not only contrary to the letter and spirit of the law, but to every former precedent.

It may be asked, indeed, what injury has been done to me, by trying this cause in a criminal court, since the same persons decided upon the question as would have acted at a private meeting? I answer, that to drag a person into a criminal court, to which his conduct has not made him amenable, to expose him to publick view, and it might have been to publick resentment, when the question should have been agitated in private, are real injuries, which are aggravated by the consideration, that the accusers and the judge had previously caballed together to overthrow the object of their persecution. But the cabal was apprehensive that its end could not otherwise have been answered. They were afraid, and probably with reason, that I should have laughed at their attempt to investigate my publications at a private meeting; they conceived, that the only way to obtain their end was to form such an accusation, as might give ground for a summons into a criminal court; and having thus secured an attendance, they relied for the rest on the character of the judge and his associates. Thus, perhaps, there never was a more flagitious breach of publick decorum than the accusation of an individual by a cabal, under the pretence of a law, which was not in existence upon any legal record, had never been acted upon, and had no authority

authority whatsoever ; and when the invalidity of this law was proved, the prosecutors were not in the least affected by the exposure of such shameful conduct, surprised only that their tricks should have been discovered, but rejoicing in the confidence, that the judges were not to be thwarted, and that it was in vain for a defendant to plead, when sentence was already determined.

In the present state of society the fate of an individual is indeed of very little consequence to the publick at large ; yet I am by no means convinced that this will be always the case, and publications like the present may tend to the improvement of social intercourse, and the destruction of those principles, by which it is now so much interrupted. We have seen by what modes a system of alarm and espionage has been established in this country ; that under the pretext of a conspiracy by republicans, democrates, and levellers, a persecution has been excited against the friends of liberty by those who, with the word constitution in their mouths, are daily violating its first and best principles : that though several instances may be produced of tumults from the latter, and not a single overt act of riot and outrage can be alledged against the former, yet the publick mind is scarcely recovered from its first delusion. By gradually laying open the arts, by which a nation has been deceived, tranquillity will be restored, and a future generation, from contemplating the effects which have always flowed from persecution, will see the error of attacking the liberty of sentiment. By combining together a variety of facts, simple in themselves, it will perhaps adopt these principles, that government is made for the benefit of the community, not for the private emolument of a few individuals ; that every law should derive its authority from the publick at large, being sanctioned only by the suffrage of a majority of those whom it is to bind ; that though no other expedient may

be found to determine the propriety of a measure than the consent of a majority, yet that the minority, in submitting to its will, is not to be injured and oppressed for a difference of sentiment, should be at liberty at all times to produce arguments, and to endeavour by reasoning to operate a change in the publick mind. My education naturally leads me to admire the genius and exertions of a Newton; yet, highly as I approve of every research into the nature and properties of the material world, I hold unlimited knowledge in this branch of little consequence to society, compared with the advantage to be derived from an accurate investigation of the powers of the mind and the duties resulting from the various relations of an individual to society. The problem of the force of particles of matter acting upon each other at different distances may exercise superiour talents; yet to what purpose is it to know the laws of remote planets, or the action of the sun upon our system, if, while we are interested in the concerns of bodies at a distance, we are exposed to all the inconvenience, which must ever result from an ignorance of ourselves and the chief phænomena in the moral world?

Sir Isaac Newton has, on the simple principle of gravity, built a system, which will establish his fame to remote ages. The true principle of acting in the moral world is not now to be sought after; it has been laid down by our saviour in few words: "Thou shalt love thy neighbour as thyself;" and upon this principle must be built the relations of an individual to the society of which he is a member, and of states to each other. The philosophers of Newton's time had much to unlearn, when he first developed his system: the events of our own time tell us in too forcible language, that true benevolence has much to encounter from the prejudices and passions of mankind. The gross views of private interest in individuals,

duals, and the contemptible desire of wealth and extensive dominion in states clash with every just notion of the general good, and, as long as there is a single individual in any community, who can say that it has deprived him of the means of exercising his talents and increasing his comforts, without injury to his neighbour, there will be found some defect in that community, which it is its duty instantly to remedy. The great subjects, which now agitate mankind, I contemplate with pleasure: I lament, however, that such opposition should have been made to free enquiry, and that this opposition introduces treachery, bloodshed, murder. I lament, that a nation which prides itself on philanthropy, and on its exertions to recall the latent principle of life, suspended by various causes in the meanest individual, should not be anxious to take every possible step, which might prevent the destruction of more thousands of its fellow creatures in one year, than its humanity will save from the grave in the course of ages: I lament that the spirit of benevolence, which could stretch out its hand to the distressed African, and say to him, "Thou art a man, and my brother," should neglect the cries of our brethren at home, and view with unconcern that system of outrageous violence practised in the metropolis, which, exercised on the coasts of Africa, filled every english heart with horror and astonishment: yet, notwithstanding the defection of some, the prejudices of others, and the total disregard of all principle in many, I rejoice that the present convulsions cannot destroy truth, and that principles are now making their way, which must essentially contribute to the future well-being of society. The nature of representative government must be investigated and understood, and that horrible power, which, to the disgrace of the professors of christianity, is supported by them in so many countries, both catholick and protestant, will be overthrown; and the priest, no longer able to impose upon mankind by the

grandeur

grandeur of his temporal establishment, by his wealth, and by his ability, to crush every opponent, not by argument but force, must submit to a new mode of conduct, and, for his own happiness, as well as that of the community, must listen to reason, and enforce his doctrine by the gentle mode of persuasion.

In the progress to this better state of society individuals have, it is to be feared, much to suffer: still it appears to me wrong, that they should be deterred by pains and penalties from proclaiming what appears to them to be true, and from pursuing that mode of conduct, which has in view the general good. On this account I shall not scruple at present, nor, I hope, at any time, to explain my sentiments; conceiving that whatever matter of derision they may afford in the higher walks of life, there may be in others a desire excited by the simple declaration of these sentiments to investigate their truth or falsehood. I lay it down then as an improvement in the art of government, that every law should be submitted to the people at large, and that representative government should be founded on universal suffrage, meaning by the term, that every man arrived at years of discretion, and not having been rendered incapable of exercising this right by a derangement of his faculties, should have a vote in the election of a representative. If authority were requisite to sanction the latter position, we might appeal to men of the highest note in this country: but we have higher authority than this to countenance our positions; for, if the supreme wisdom could condescend to allow the recognition of its authority by the acclamations of the general assembly of a nation, no class in society can feel itself at all degraded by submitting its decrees to the final approbation or disapprobation of the people. In consequence of the establishment of such a mode of acting, the laws, it is evident, must be simple, plain,

plain, concise, cannot bind more than one generation, and in that generation must be liable to frequent revision: for, as every law must be sanctioned by a majority of the people, and life and death are making daily changes in a society, recourse must frequently be had to the sense of the nation. Whether a term of seven, fourteen, or twenty-one years should be adopted for the duration of a law, experience will best determine: and thus, if a nation should at one time make absurd laws, the inconvenience, since freedom of discussion is supposed to be unlimited, will be soon discovered and remedied. As representatives have been found in many nations to consult their private interest instead of the general good, their power should be of short duration: a year is sufficiently long for every purpose, and in that period it should be left to the district to recall its representative, whenever he appears to them either incapable of executing his trust, or abusing it to pernicious purposes.

I should not have thought it necessary to be so explicit in this place, if, since the publication of my pamphlet, my sentiments had not been enlarged by a fuller investigation of the subject. All the arguments, which have suggested themselves on this occasion, cannot be brought within the narrow compass of a preface, and may afford matter for future discussion: but, as I had once suggested that triennial parliaments, and a partial extension of suffrage, would be sufficient for the purposes of government, I think it now necessary to declare my conviction, that universal suffrage and annual parliaments would be more conducive to the general good. The system of espionage established in this nation, might be thought a ground to deter every one from speaking freely on so important a topic; but with me it operates in a different manner. The minister is ransacking his invention to discover, by the basest agents, the sentiments of individuals: he must wish
 9 therefore

therefore to be acquainted with them without trouble; and the easiest way for every one, who has an opportunity of doing it, is to avow them openly. Thus the general sense of the nation will be in time discovered; the advocates for universal suffrage and annual parliaments, will be seen to occasion no real ground of alarm to any one. We are in a minority, and profess to use no other efforts than those of argument. Should we become the majority, there cannot be a doubt that the minority will comply with the new measure, with the same ease as we do with the old. The change would be produced without confusion; and as the suffrage has been taken away, in my judgement improperly taken away by parliament, from certain descriptions of persons without confusion, so the suffrage may be enlarged by the same authority, and no one will have a reasonable ground of complaint. In this however and other sentiments, which I have adopted, let it not be supposed that all those whose friendship I enjoy concur with me. They may see these things in a very different light; and can claim only from me, that no improper influence should have weight on my mind, either in the pursuit of truth, or the declaration of my sentiments. On these terms alone friendship is desirable; and, as on these terms I have lived, I hope I shall continue to live on the same terms in harmony with men of different religious and political opinions.

I cannot conclude this preface without obviating a remark, which might otherwise be made by the readers of the following pages, who, when they see so many eminent names employed by the university as counsel, might think my cause weakly supported in the king's bench.— But strength depends not on numbers, but ability to investigate a question; and on the latter ground, we were not fearful of entering the lists with our antagonists. Mr. Gibbs's merits are deservedly stamped with universal applause,

plause, and are far above the testimony of a private individual: but my friend, Mr. Raine, might by some have been considered as not of sufficient standing at the bar, to take upon himself so large a share of the pleadings, when he was to be opposed to veterans of the art. Independent of the interest which he took in this cause, there were other reasons, which induced myself and friends to place the utmost reliance on his exertions.— We were, from his progress through one of our chief schools and the university, acquainted with his distinguished merits as a scholar; and were convinced, that the superstructure raised on this foundation could not, when his abilities had an opportunity of being displayed, fail of promising him equal distinction at the bar. Thus, notwithstanding our ill success, it gave us pleasure to hear, that our cause could not have been in better hands, and that nothing on our part was wanting for the information of the court.

I must here too take notice of a circumstance, which was mentioned to me during the time of writing this preface. A dignitary of the church lately deceased, observed, on reading the account of the proceedings in the university, that my denial of any attempt to proselyte my pupils, when tutor of a college, was overthrown by a remark of my own upon another occasion; namely, that ten thousand books of various sizes, written by various authours, had been distributed either by myself, or others under my direction, from the place in which I then was. This worthy dignitary did not make a distinction with respect to the times when these books were distributed, or the subjects of them. I specified indeed two subjects, the slave trade and the test act, which might have led him to conclude, that many of the books, if they had been distributed among my pupils, did not tend to proselyte them to heretical doctrines. The fact is, that of the ten thousand

sand books referred to, many were composed by me for
 Sunday schools, which were used in those I had been
 instrumental in forming, and are used, I believe, at present
 in various parts of England. Among them also is
 included a collection of psalms, which is still perhaps
 used in some churches; and indeed application was made
 to me about five years ago for a quantity of them,
 by a doctor in divinity of the university, with which I was
 unable to supply him, as out of a thousand only two co-
 pies remained in my possession. These books were distri-
 buted before I had discovered my errors, and conse-
 quently before I could proselyte my pupils to such
 opinions: they contain nothing heretical, according to the
 orthodox sense of the word, have been used and approved
 of by many orthodox clergymen; and I think I can take
 upon myself to say, that, as these books were designed
 chiefly for children, none of my pupils had an opportunity
 of seeing them afforded by me, and most probably not
 from any other quarter. To the best of my recollection,
 there could not have been a less number printed than five
 thousand of these little books, which, however, were not
 put into the hands of any bookseller, and were dispersed
 by the end of the year 1787. From June 1787, to the
 publication of the pamphlet, which occasioned my dis-
 mission from the tuition, I remained inactive, having in
 that interval caused only to be sent to the members of the
 senate some copies of the laws relating to subscription.
 From the time that I ceased to be tutor, my books certainly
 bore a different aspect; very large editions of my addresses
 on the unity of god and the divine adoration improperly
 paid to Christ by various sects were circulated; and I am
 not without hopes that the seed thus sown has been pro-
 ductive of good. We know that the society for abolishing
 the slave trade has distributed books in vast numbers; and
 to inform the publick mind a similar measure is in all cases
 expedient. From my own experience also on this subject,
 I recommend

I recommend earnestly this method to others, whom I encourage to expect more from the distribution of little tracts, in popular terms, than can be expected by learned and voluminous exertions.

Thus I shall always be ready to vindicate any part of my conduct, when the objections come fairly before me, and I can without impropriety bring forward the refutation of them. It is not to be expected, that I should always hear the insinuations of adversaries, who fear the light: I know with whom I have to cope, and the falsehood they propagated against me, a falsehood easily detected by the evidence of many thousands in the neighbourhood of Cambridge, convinces me that there is nothing which they will not dare to do in support of their cause, and that it will be an irksome task to oppose such unworthy antagonists. Whilst their calumnies are intended only to injure myself I can hear them with composure; yet my indignation, I confess, rises when I discover the steps taken by themselves or their partisans to injure my friends. Thus at this moment a copy of a letter is before me, written by a doctor in divinity of the north to the members of a city company, in whose gift is a lectureship, for which a friend of mine was candidate. To be interested for one candidate in preference to another is certainly allowable; but surely a man of probity will not condescend to the use of any ungenerous arts to depress his adversary. My readers will hardly think it possible, that this divine, this true son of the church, should assign as his greatest reason for wishing success to one candidate was, that his "principal competitor is firmly attached to "Mr. Friend of Cambridge, which he confidently avows." Fortunately this company, with which I am not at all acquainted, was not so alarmed at this confident avowal of friendship, and the mean efforts of the divine were treated with merited contempt. From these, and too many other specimens,

specimens, I know what I have to expect : yet the malignity of some, and the credulity of others, shall not prevent me from using the proper instruments of self-defence ; and, if I cannot teach the cabal a more generous mode of attack, I shall, I am confident, in the course of not many years, have brought the publick to a full conviction, that the academical censures fulminated against me did not proceed from an examination and conviction of any thing erroneous in my writings, but originated in the spirit of party and the grossest views of self-interest.

The reader is desired to correct page 55, where Dr. Farmer is by mistake said to have been only once vice-chancellor, as he has held that office twice. The term cubicks also escaped the authour's pen in page 8. This name was given to the cabal in the university on its first boasting of the number twenty-seven, which met at the vice-chancellor's house to deliberate on the mode of proceeding. The mathematicians, hearing so much of the twenty-seven, applied this term to them, which soon became general. It may not be improper to notice here also the deviations from the common mode of spelling ; thus in the words derived from verbs, such as directer, electer, from the verbs direct, elect, the authour follows a mode of spelling, for which he has only the sanction of antiquity, analogy of the language, pronunciation, and derivation ; for it is a mistake to suppose that these and similar words came to us immediately from the latin ; and in conversation they are not pronounced director and elector,

SEQUEL, &c.

AN account of the proceedings in the university of Cambridge, against the authour of a tract, entitled Peace and Union, recommended to the associated bodies of republicans and anti-republicans, has already been given to the publick. From the decision of a vice-chancellor's court and a committee of delegates, application has been made to the court of king's bench : and this court has given its sanction to the proceedings of the university. There remains only one court more on earth, to which an appeal can be made ; and that is in the breast of every individual, who has leisure and ability to investigate a question of no small importance not only to academicks, but to all persons interested in promoting the publick welfare by the produce of their studies. To this court the appeal is cheerfully made ; with a full conviction in the mind of the writer, that the outcry raised against him was not the effect of zeal for religious opinions in mistaken but conscientious men : it arose on the contrary from a cabal, which seizing the opportunity, when a most profligate system of espionage was introduced into this country, sought to recommend itself by the ruin of a man, whose audacity, in thinking for himself and professing his principles, had made him an object of fear and detestation to the patrons of implicit faith, indolence and corruption.

RECAPITULATION of the PAMPHLET.

Ground of complaint against the authour,

It may not be improper to recapitulate here the contents of a work, which occasioned so much alarm. As it came from one not connected with any political society; who reprobated the cruelties perpetrated under the french revolution, but rejoiced at the overthrow of a monarchy and an established superstition held in horror by our ancestors; who considered the examples of France and America by no means a sufficient ground for the overthrow of our present form and government; and who indeed did not examine the question, whether our constitution was in theory or practice the best, but took it for granted, that no change was to be introduced unless from the desire of a majority of the people; it may seem astonishing, that so many persons should unite in exclaiming against the work, and endeavouring to overwhelm its authour by every calumny in their power. The fact is, that the less ground of complaint there was on the principles of the constitution, the more danger was apprehended from the recommendation of several species of reform, which could not fail of striking an intelligent reader. The abuses of a good government must not be mentioned in a country, where so many thousands profit by them: and the least attempt to improve and enlighten mankind, is considered as the most dangerous species of innovation by those, who batten on the dregs of corruption and influence.

Contents of Peace and Union.

The reforms recommended were classed under three heads, representation, law, and religion. Under the first the shortening of the duration of parliaments, increase of votes in boroughs, extension of the right of suffrage to copyholders as well as freeholders, and the antient system of government introduced

duced by almost the only king of this country, who seems to have had the good of his people at heart, were recommended. Under the second head some evils in the modern system of law were enumerated; and the more its iniquity is developed, the greater reason will every one see for wishing many other things in it to be removed, which seem planned only for the confusion of all ideas of natural justice and equity. It was doubtless a heinous crime to recommend, that the laws should be plain and intelligible; that the jargon, which pervades all the courts, should make room for common sense; that the remains of the feudal system and the game laws should be abolished. This may be a heinous species of delinquency; but so far is the writer from being inclined to retract his judgement, that the more he has seen of this branch of our government, the more does he applaud our Saxon ancestors; and he looks upon the decision of twelve men, unshackled by contradictory statutes, unmeaning precedents, and judicial expositions, as far superiour to all, that is called the wisdom and experience of law. Under the third head some changes in the religious establishment were desired. The writer did not indeed bring forward the whole of his faith, nor did he think it necessary at that time to recommend his peculiar tenets: it seemed sufficient to him to explode the foolish ideas entertained of uniformity of opinion; to recommend what had prevailed even in popish times, a diversity of liturgies; and to call upon all parties, to find a substitute for the better payment of the clergy, than that, which is now the occasion of mistrust and discontent in too many parishes. He considered it too as absurd, that any person should be subjected to the rites of a church of which he disapproves, and that to enjoy a civil office a religious test should be thought necessary.

TRUE OBJECT of the PERSECUTION.

Religion made a
pretext by the twen-
ty-seven.

THESE religious opinions were greedily caught up by the cabal, and to insure success, they imputed to the writer others which he did not maintain. The vilest insinuations were daily thrown out against him, and the ministers of peace indulged themselves in every species of malignity and persecution. That religion was not the real ground of their actions is evident from the little concern, they had shewn, when the most sacred articles of their church were by the same person but a few years before in the most publick manner impugned; when he in utter defiance of academical statutes declared the doctrine of the trinity to be a mere figment of metaphysicians, totally unfounded in scripture; when he called upon the university to give a sanction no longer to the idle tales of their forefathers, but to worship as they ought the god and father of Jesus Christ; when he renounced intirely all obedience to and connection with the church, and withdrew his assent to those articles and canons, to which, from want of knowledge and instruction, from the prejudice of birth and the false opinion of wisdom and integrity in others, he had been induced to give his signature. If the men, who were so active in writing to their bishop, and making the house of the judge the seat of their intrigues, had really been influenced by a zeal for their supposed religious truth, why did they not then attack so open an impugner of their doctrines? Why did not the vice-chancellor and heads, who themselves heard him inveigh against established opinions, call him to an account? Why did they not insist on a statute being put in force, when the crime, if it is really a crime among protestants to speak the truth, was evident, when there was scarce a man in the university, who could not bear testimony against the heretick?

Why

Effects of the pro-
clamations.

Why was it not then done? the answer is obvious. The publick mind had not then been poisoned by proclamations: the terms jacobin, republican, and leveller, had not been familiarised to an english ear; it was not thought possible, that men should be confined in prison for maintaining and printing those sentiments, which had been the means of elevating others to the highest departments of the state. It was not thought possible, that the english nation should be so degraded, should have so far lost every idea of its ancient dignity and honour, that the basest part of the french monarchy should be introduced into and patronised in this country; that spies should be everywhere encouraged; and that a society should be formed in the capital, to receive anonymous information, to harass and destroy every individual, who would not subscribe to its insolent opinions of government.

Reasoning of
the cabal.

But the time came, when his majesty's attorney general thought it expedient to set some bounds to the liberty of the press; and the loyal and orthodox members of the university could not be behind hand in shewing their attachment to the good old cause. This was a fine opportunity to put a stop to the discussion of religious tenets, and to check the torrent, which was dreaded, of improvement and reformation. It would be disgraceful, they said, when his majesty's attorney general was so industrious, that the university should be idle; and forgetting that the object, not only of the statute, which they brought forward, but of all honest christians, is not punishment, but the prevention of error, they met together with the sole view of inflicting as much punishment as it was in their power to devise. Foolish and inconsiderate men! What avails it, that ye have deprived a student of the little solace left to him; that ye have shut against him the doors of those libraries, in which

your footsteps are seldom heard; that ye would bar against him every avenue to knowledge, and, from the scanty wreck of his fortune and his hopes, grudge him his lodging and his food? Wicked as your plans are, the futility of them is equal to their folly! Ye have driven one student from his books, but his opinions are left behind. Ye cannot banish thought; and thought engenders thought; and future students, whilst they reprobate your meannefs, and your malice, will investigate the opinions, which have given rise to so much persecution.

Proceedings in Jesus college, and consequent application to the court of king's bench.

The cabal succeeded in their plans; and it could not be otherwise, when the accusers were either Conduct of cer-
tain fellows of
Jesus college. judges themselves, or acted in concert with the judge: but, as they had brought forward some statutes, as a pretext for their conduct, it was thought right, that the legality of their proceedings should be investigated. Certain fellows of Jesus college had begun the attack, by writing to the bishop of Ely, their visiter, and the vice-chancellor of the university, on the subject of the pamphlet; and, as they had thus put themselves on the footing of accusers, there seemed to be an apparent inconsistency in their presuming to sit in conclave on the merits of the work, and to become the judges, as well as the accusers, of their colleague. But from these men delicacy of conduct was not to be expected. They had written to their visiter; he very kindly desired them to do the business themselves; they were happy in the certainty of having their measures confirmed, and the statutes, they knew, were a nose of wax, which they could break when they pleased, or convert with ease to the injury of another. Presuming, therefore, to make themselves

selves the judges of a book, written by one of their colleagues, with unabashed foreheads, they set themselves to work ; they found a statute, which declared, that men of bad morals should be driven from the college ; and, with impudence inconceivable, these very men, who could find only one fellow besides to be of their party, joined with the master of the college, in declaring the writer of a pamphlet driven from his college, till he, to whom they had not alledged any immorality, or any crime, could bring proofs of his good behaviour. The bishop confirmed the sentence ; and these fellows enjoyed a triumph, by which the studies of their colleague were interrupted, and the plunder of his property was chiefly divided among themselves.

Application to the
court of king's bench
on the college pro-
ceedings.

An application was made to the court of king's bench, on the ground, that no crime against any statute had been pointed out ; that the statute, on which the sentence was founded, required the concurrence of a majority of the fellows ; and that six only, out of sixteen fellows, had concurred in the sentence of amotion. The court refused to attend to this application, because there was a visiter, and the decisions of a visiter are, it now seems, to be considered as final. The usurpation of the master and a few fellows of the college being thus sanctioned, very slight hopes could be entertained of redress, unless some important and desirable changes take place in the political world : and, the college cause being dismissed, the proceedings of the university remained to be taken into consideration.

*Proceedings in the university, and consequent application to
the court of king's bench.*

Proceedings in the university. The nature of these proceedings is now generally known. A cabal, distinguished by the name of the twenty-seven, or the cubicks, met at the house of the vice-chancellor, and determined to prosecute the authour of Peace and Union: he was cited, in consequence, into the vice-chancellor's court, which, consuming eight days in the hearing of this cause, condemned him to banishment. From this sentence an appeal was made to the senate of the university, in which the cabal, with equal activity, interested itself in the election of delegates, and appointed such persons as, either from a declaration of their sentiments, or other sufficient ground of presumption, it conceived, would confirm the sentence of the vice-chancellor. The proceedings of the delegates were conformable to the wishes of the electors, and totally incompatible with either former usage or the nature of appeal. They cited the appellant into their court; whereas the true mode was for the appellant to call upon them, and request their acceptance of the delegation; and one of the lawyers seemed, even by his outward deportment, to consider himself as counsel against the appellant. Whether there is sufficient ground for the report, that Dr. Jowett, one of the most active of the twenty-seven, accompanied by Dr. Milner, did really confer with Sir W. Wynne on the subject of the appeal, previous to the meeting of the delegates, time alone, or the positive declaration of these persons, can discover; and it is mentioned here, that, if innocent of the charge, they may do themselves justice, by a positive disavowal of the fact. Suffice it, that the appellant neither directly nor indirectly had any communication with the delegates; that

he knew not by whose means they came into court, so well prepared with documents, as to excite a conjecture, which their readiness in determining almost confirms, that they had prejudged the cause; and, if there really was a communication between them and the twenty-seven, or the heads, on the subject of the appeal, such conduct must be considered as a consequence only of that gross injustice, which was apparent in the onset of this prosecution, and as another insult offered not to an individual only, but to the body of the university.

It would scarcely be necessary to repeat here the motives for an appeal to the senate, if the subject had not been much misunderstood and misrepresented, not only in various companies, but by the chief justice himself, sitting in his judicial capacity. The laws of the university require, that every appeal from the vice-chancellor's court to the senate should be made within two days after the passing of a sentence; and a neglect in this instance would render futile every other attempt to obtain redress. Had the appeal not been made in the present instance, when the cause was confessedly tried in the vice-chancellor's court, the king's bench could not have taken cognisance of it; for the reply of the university would have been, that, if injustice had been done by the vice-chancellor, a mean of redress was open, by an appeal to the senate. This has been stated in another place, but the argument has not been properly considered: on the contrary, it has been asserted, that by an appeal to the senate an acquiescence was implied, in the propriety at least of a trial in the vice-chancellor's court; whereas the only reason for such an appeal was to obtain access to the court of king's bench; and it cannot be supposed that any great expectation of redress was formed from a meeting of delegates, when it is considered, that the twenty-seven moved heaven and earth

earth to secure their own men, whilst the appellant not only made it a point of conscience not to interfere in the election himself, but positively resisted every mode, pointed out by the zeal of friendship, by which the career of the cabal might have been checked. Yet what can resist the influence of intrigue in publick bodies, as society is at present constituted? When men are lost to all sense of decency and honour, when they scruple no means to obtain a certain end, when they use every argument that can be applied to the passions, the prejudices, or the interest of the voter, what chance has the individual, who relies only on his own integrity, and the justice of his cause, and disdains the use of those arts which insure success to his antagonists?

Grounds of the application to the court of king's bench.

The delegates, by confirming the sentence of the vice-chancellor, paved the way for an application to the court of king's bench, which was made chiefly upon the following grounds: That the pretended offence was not cognisable by the statute under which it was tried; that an offence against that statute was not cognisable in the vice-chancellor's court; that the recantation proposed did not specify any errors, by which the statute was violated; and that the sentence pronounced was not itself agreeable to the statute. The two former points were affirmed to be evident from the words of the statute, the nature of the vice-chancellor's court, and universal practice; for not an instance can be produced of a person being punished, under the above-mentioned statute, for refusing to retract any opinion published only in writings, nor an instance of any person being punished under this statute in the vice-chancellor's court, though there are several instances of persons being convened before the vice-chancellor and heads for a violation of this statute, and

and treated in a very different manner from that which a court of law requires.

Cases referred to. In support of these opinions references were made to the cases of Chark, Brown, Browning, Milayn, Chadwick, Johnson, Bambridge, Baret, Baro, Whiston, Duckett, and Waller, which, it was supposed, would have thrown considerable light upon the question; and, as they contain much curious information on the progress of religious toleration and instruction, merit the attention of every impartial reader.

CHARK'S CASE.

THE first instance upon record is that of William Chark, fellow of Peterhouse, who, in a Latin sermon*, on Dec. 3, 1572, asserted, that the states of bishops, archbishops, metropolitans, patriarchs, popes, were introduced into the church by Satan; and that among the ministers of the church no one ought to be superiour to another. For these opinions he was convened before the vice-chancellor and heads, required to make a publick recantation, and, on his refusal, was banished from the university. From this sentence he appealed, but the vice-chancellor refused, and, it seems, with great propriety, to admit the appeal; for he judged†, that no

* *Concio ad clerum.*

† Isaac Milner, the vice-chancellor in W. Friend's case, was aware of this distinction, and hesitated on the propriety of accepting the appeal; which, indeed, he could not have admitted, if the sentence of banishment had followed a refusal to recant, in the manner proposed by the vice-chancellor and heads assembled in private, and not in the vice-chancellor's court: but he felt the force of truth; he knew that he had been acting in his own court, from which there lies an appeal to the senate; and upon this subject the erroneous opinion of Lord Kenyon will, upon the slightest investigation of the matter, be easily seen.

appeal could in reality be made, when sentence followed one, that had confessed what was charged upon him ; and that there could be no appeal, when the sentence is given by the “ vice-chancellor, with the assent of his fellow “ judges, the major part of the heads of colleges.” The mode of conduct pursued in this case is best seen by the letter, written to the chancellor of the university, by the vice-chancellor and heads of colleges, in vindication of themselves, against Chark’s censures*.

“ Our duties in most humble maner to your honour remembered. Your lordships letters, written in behalf of Mr. Chark, have made us al not a little perplexed ; partly for the boldness of him, who, for so notorious a fault, and manifest breach of statute, would attempt to procure your lordship’s favour ; but, most of al, for that we are hereby brought in some doubt of your lordship’s good liking of our proceedings in that case ; wherof, to render a just account, and that your lordship may thereby the better judge what lenity hath been used on our parts towards the said Chark, contrary to his report (as it seemeth), may it please your lordship to be advertised of the whole matter from the beginning.

“ First, omitting the great expectation of many, long before his sermon, raised (as may probably be thought) by some speech given out by him concerning those things, wherof he would entreat ; leaving also his singular confidence, used in the whole action and utterance of his sermon ; even at that time, when he was called before us, besides the obstinate defending of his errors, he spared not in presence to overthwart divers of the heads, in very unseemly maner, and with taunting words ; nevertheless bearing with his want of discretion beyond his deserts, and seeking to allure him by gentle persuasions, we thought good he should severally be communed with by three or

* Strype’s Life of Whitgift, p. 43.

four of our company. After which conference, though they had little prevailed with him, yet that he should not think himself too straitly dealt with, we graunted him more than seven weeks space, to consider thorowly of his grounds, and after good advisement to yield his answer upon the same, giving him further to understand how we could do none otherwise than the statute required, if he should persist in his conceived opinions.

“ At the time appointed we found him nothing altered; howbeit, stil wishing his good conformity, and meaning rather to reduce him charitably, than suddenly to cut him off, we offered, that if he would but only promise, upon better deliberation, to revoke his assertions, he should be respected for the performance therof til after Easter; which, for that before us al, he utterly refused to do—it was concluded with one consent, that he should incurr the pain of the statute, that is, to lose both his college, and also the university.

“ Now, if this punishment had been enjoined him only by our arbitrement, and not by statute, yet his demerits being such as we have declared, and he cannot deny, he could not justly have complained of over much severity, But seeing we have done nothing of any private consideration in this case, but our sentence hath been wholly directed by her majesty's statutes, delivered unto us, as a rule to guide us, and wherewith to dispense is utterly forbidden us, we much muse what colour of defence he can seem to pretend. And, surely, how necessary it is that we have such statutes, and, namely, that one concerning *preachers* (which statute was sent enclosed), the malice of these times doth easily shew; for, since Chark hath broached these untimely contentions, others have ventured to continue the same; wherby the minds of some are so incensed, that in many colleges they study and devise only how to molest and disquiet their governours; their drift,

as

as it is wel known, being nothing else but to procure to themselves a licentious liberty, wherin, if they may find favour through their importune suits, our state is most miserable of all others. What poison lieth hid in popularity cannot be unknown to your singular wisdom: our labours and travails, in suppressing the same, must needs be joyned with occasion of great envy, which we shal never be able to resist, unless we be supported by your lordship's authority, and others that are placed in the chiefeest rooms, especially when the difference consisteth in this; whether we shall be borne with for executing our laws, or others, by indulgency, encouraged to break the same.

“And yet for Chark we have further to report, that after the delivery of your lordship's letters, being again demanded, whether he would yet promise to retract his former doctrines, he would in no wise yield therunto, but made the like refusal as before, adding, that he thought your lordship's meaning was not to have him recant; wherin, as your lordship may wel perceive his great presumption, so did he nothing deceive the expectation of some of us, who have noted him in the like haughty stomach, ever sithence we first knew him.

“Thus having dissembled nothing, but plainly laid forth the cause, as it is, we are most humbly to crave your lordship's favourable assistance for the repressing of this, and the like enormities, wherewith we are so greatly incumbered at this present, that of force we should faint, were we not sustained with the only hope of your lordship his good acceptation and countenance of our dutiful travailes in that behalf. Even so praying the almighty long to preserve your honour, to our great comfort, and the wealth of this state, we humbly take our leaves.

From Cambridge, the 2d day of March, 1572.

Your lordship's ever most humble at commandment*.”

Subscribed by the vice-chancellor and ten heads.

* App. to Whitgift's Life, page 14.

BROWNING'S CASE.

BROWNING was convened before the vice-chancellor and heads about the same time, for uttering in St. Mary's, certain doctrines, tending to the heresy of Novatus, and prohibited from preaching again, till the question had been thoroughly investigated. In spite however of this admonition, he did preach again, and for his contempt of authority, totally independant of the new statute of Elizabeth, was committed to prison*. As besides the heretical opinions advanced, he had touched upon matters of state, the question was thought of higher consequence, than to be settled in the committee, and in February he was bound in a recognisance of two hundred marks to answer for the same, when called upon; and Booth and Shedley, two fellows of the same college, were bound in forty pounds apiece for his appearance. Thus released from the committee he was turned over to the chancellor, to answer for these dangerous words, by whom he was treated with great mildness; and it does not appear, that his ecclesiastical doctrines were afterwards examined by the committee. His conduct however gave great offence, and some years after he was, on the pretext of having disobeyed a college statute, deprived of his fellowship.

* Register of the commitment, anno 1572. Jan. 27. Johannes Browning, M. A. et socius collegii S. Trinitatis per D. vicescancellarium de assensu præpositorum, scil. D.D. Pearne, Hawford, Kelke, Mey, Whitgysse, Chaderton, Harvey, Shepherd, Goad, Aldricke, committitur carceri le Talbothe. Eo quod prohibitus per doctorem Whitgift, deputatum D. vicescancellarii, ne concionaretur, quia accusabatur de suspitione corruptæ doctrinæ per ipsum prolatae, ea tamen prohibitionem non obstante concionatus est. Registr. Academ. Strype's Life of Whitgift, b. 1. c. 8.

BROWN'S CASE.

IN the same year 1572, Brown was convened before the vice-chancellor and heads for two sermons, the one delivered on the Sunday before Christmas, the other on the 25th of January following, on which it was objected to him: 1st, that in both the said sermons he uttered doctrine and reasons tending to the infringing of the order and manner of creating or electing ministers, or the regiment now used in the church of England, or tending to the corrupting of Musculus's reasons, whereby the said Musculus would establish the said order or regiment now used. 2d, That he said no priests, made in the popish time, ought to have any function in the church of England, except they were called again, or words tending to that end.

Brown's account of the meeting. Upon these articles he was frequently called before the committee, examined by it, treated sometimes with harshness, so far as to be confined to his rooms, but, according to the vice-chancellor's account in his letter to the chancellor, every delay was used, upon the hopes of farther conformation, and that by reasonable means he would be ruled. Brown wrote also in July 1573 to the chancellor, and gave the following account in Latin of his treatment. "Five months ago," says he, "I preached before the university, and, in the opinion of those who felt themselves hurt by my censures, inveighed against certain vices with too great asperity. In consequence I was convened before your vice-chancellor and the heads. Certain articles were objected to me, but there was not an accuser: and, when I persisted in it, that such things never came into my mind, much less that I had proposed them to the people, some men in the university were sent for, who being supposed

posed to have been present at my sermons, were compelled to relate upon oath, what they had heard me speak, and to leave their declaration in writing signed with their own hands. By these very declarations, if the heads had acted according to law, I must have been acquitted: for some of these hearers freed me from every suspicion, others heard nothing at all, others hesitated much in giving any opinion. It was however determined, by what mode of argument the heads only know, that I should retract propositions, which I really never taught, though some persons with bad ears dreamed that I had taught them; and this condition was added, that, if I refused, I should not only be expelled my college but banished from the university." After some observations on the recantation and the difficulty of pleasing men, who would prescribe the voice and gesture, with which it should be performed, he continues: "Let it suffice that an innocent man has been called very often before the heads, has been examined, has been confined to his rooms. Permit them not to cut me off in the career of my studies, to deprive me of my livelihood, to take away my character, to drive me into banishment, especially since I confine myself within the royal laws, which I have subscribed before the vice-chancellor*." This application, however, did not meet with success: he complied with the terms of the meeting, and in the November following made his recantation†:

BROWN'S RECANTATION.

WHEREAS I, preaching in this place the Sunday before Christmas, and also the twenty-fifth of January last past, was noted to have preached offensively, speaking as well against the manner and

* Ap. to Strype's Life of Parker, lxxx.

† Ibid. iv. 18.

form of making and ordering of ministers and deacons in the church of England now established and allowed, as also against such priests as were made in king Henry's and queen Mary's time, saying, that they were not to be admitted into the ministry without a new calling, I let you all to understand, that I never meant so. For I do here acknowledge, and openly protest, that the manner and form of ordering of ministers and deacons in the church of England now established is lawful and to be allowed. Item, that the priests made in king Henry's and queen Mary's time, now allowed and having or exercising any function in the church, are lawful ministers of the word and sacraments, without any new ordering otherwise than is prescribed by the laws of this realm."

MILAYN'S CASE.

THE troubles to which every man, who dissented in those days from the ruling powers, was exposed, did not deter Milayn, a fellow of Christ college, from declaring his religious opinions. In October 1573 he publicly preached at St. Mary's doctrine stigmatised as erroneous, was convened for it before the vice-chancellor and heads, acknowledged the preaching of such doctrine, was often required to confess his errors, but on refusing to comply with the exhortations of the meeting, and calling on the contrary upon it to receive his doctrine, was banished from the university. This is the account given by the vice-chancellor by letter, as was usual in those days, to the chancellor; in which he states, "that among other things Milayn entered a discourse of
 "the ordering and making of ministers, of fasting, of
 "faints eves, of keeping their days festival, avouching
 "these conclusions: 1. That the ordering and making
 "of ministers, now used in the church of England, is an
 "horrible

“horrible confusion, and contrary to the word of God.
 “2. That ignorant ministers were no ministers. 3. That
 “to command faine eves, as of the apostles, the virgin
 “Mary, &c. to be fasted, is abominable idolatry. 4.
 “That to command the same faine days to be kept and
 “observed as holy days, is abominable idolatry *.”

Contents of
 Milayn's sermon.

The vice-chancellor besides enclosed a brief extract of Milayn's sermons, and committed a large report to Mr. Howland, the bearer of the letter, and who had also himself endeavoured to refute, in the same pulpit, the grievous errors above mentioned. As it is curious to see on what points the heads were so much offended, and what were the subjects of dispute in those days of pretended reformation, the report is here subjoined.

“The contents of a sermon, preached at St. Maries in Cambridge, by one Millayn, fellow of Christ's college : against the ministrie of the church of England.

“First, That ignorant ministers were no ministers, because they were not chosen by God. For they which were chosen by God, them God had always endued with understanding sufficient. But in those were found no such sufficiency. Therefore they were no ministers.

“Secondly, That other ministers, which were both sufficient to answer their charge, and also ready and willing to take upon them the charge of the ministry, were partly rejected from their function by the clergy; partly not called therunto. It is not lawful to admit him to the ministry that cannot preach. And therefore there is invented a new ministry, namely, a *reading* ministry.

* Strype's Life of Whitgift, i. 8.

“ Thirdly, That the clergy of *England* do not only not advance and set forward the edifying of the church; but as much as lyeth in them (and this point he did exaggerate mervailously) they do deface, hinder, and pul down the same, in maintaining both advoultrye and idolatry. First, *advoultrye* was divers ways boulstred, contrary to God’s word, by the pope’s law, called *the canon law*. Considering, that by the canon law, if a man or woman be never so much suspected of advoultry, if the party bring forth twelve to swear, that they think he hath not committed that crime, he is by and by cleared; wherby many advoultries are boulstred.

“ A minister, not being rightly called by the congregation, is no minister.

“ He that is negligent, and maintaineth *officials*, is no minister; and so ought of the people to be accounted.

“ Again, They maintain *idolatry*, in allowing and defending holydays of saints, and fasting on the evens.

“ Fourthly, That the common sort of the clergy, which, although they had learning, were either negligent in teaching, or preaching, or dissolute in their lives, were no preachers, nor ministers before God. And so he perswaded the people to take them; urging also an earnest and effectual reason therefore, viz. That they could shew no proof of their preaching: chalenging any of them out, to shew what one soul they had won by their preaching; affirming, that twelve diligent men would do more good, in al *England*, than al the preachers that now be.

“ Fifthly, That our calling of the ministers was not lawful, because they were not called to any ordinary function, nor to any certain place of the ministry; but were made

(as

[21]
(as he said some of them made this excuse) pastors of *England*, not of any private or certain place: which, he said, was clean preposterously don: and that rather a pastor of *England* might make a bishop of *Lincoln*, than the bishop of *Lincoln* might make a minister of *England*.

“The prince admitting a bishop, called him to an ordinary function. *What*, said I, *to a function*? He stood very much upon that point, to persuade the people, that there was no minister now; and that they ought to look to the matter, it being so weighty, and their souls lying upon it*.”

SMITH'S CASE.

WHEN no one is permitted to discuss an important subject, the peace of the university is said to be well preserved; and this kind of peace seems to have been maintained till the year 1585, when the act of parliament for the better observance of the Lord's day occasioned some disputes on the nature of the sabbath, and the propriety of keeping sunday, from evening to evening, according to the law established for the jewish sabbath by Moses. For certain opinions maintained in a latin sermon on this subject on ash-wednesday, John Smith a master of arts was convened before the committee; and in its presence on February 21 subscribed a confession, that he had declared among other things in his sermon, “That the plays at saturday and sunday at night were breaches of the christian sabbath. On sunday, for that they were at it before the sun was set: on saturday, for disabling their bodies for the sabbath duties.” On the 26th he appeared again before the com-

* Ap. to Whitgift's Life, page 16.

mittee assembled in the great chamber * of the vice-chancellor in Queen's college, when certain questions arising from his sermon were proposed; in some of which Smith agreed with, in others differed from, the committee. The questions proposed were:

1. "Whether the christian sabbath is to be kept jure divino from even to even?" Smith and the rest answered negatively.

2. "Whether the time of the Lord's day is to be continued jure divino by the space of twenty-four hours?" Smith answered in the affirmative; all the rest negatively.

3. "Whether the christian sabbath is broken, when some thing is done, which is not necessary or religious?" Smith answered affirmatively; so that necessary be not too strictly taken. All the rest negatively; so that those actions do not hinder religion, or are not an offence to the brethren.

4. "Whether christians are bound so strictly to the observation of the Lord's day in respect of works, as the Jews to the observation of the sabbath?" Smith and the rest answered negatively.

Upon the whole, Smith promised to explain his opinions more fully in another latin sermon, to be first shewn to and approved of by the vice-chancellor; and, as no farther notice is taken of him, it is to be presumed, that his discourse gave general satisfaction. The mode of conduct pursued in this case evidently proves, that, so

* The words of the registry are in *magnâ camerâ*; and there is not the least appearance of a court of law in the transaction. The whole was clearly done, as in all other cases of this sort, by conference.

far from not specifying errors, the great business of the committee was to find out the errors, to point them out to an ignorant or tenacious preacher, and to be satisfied with the easiest and least ignominious mode of recantation *.

CHADWICK'S CASE.

ABOUT two years after, offence seems to have been justly taken at a sermon preached at St. Mary's by Charles Chadwick, M. A. fellow of Emanuel college, in which much abusive language was used on occasion of the non-residence of some members of the university, particularly the governors of colleges, whom the preacher called murderers of many thousands. For this sermon he appeared on November 2, 1587, before the vice-chancellor and five doctors, who are stiled *justiciarii dominæ reginæ*, and entered into a recognisance of fifty pounds, to appear in person, or by his attorney, before the vice-chancellor, whensoever legally summoned, to answer for it, and to any other persons, who were injured by and intended to prosecute for words then and there uttered. In this case there were prosecutors; and the cause was of a different nature from those † that were brought by the statute, under the inspection of the committee, and treated therefore differently: it was a cause of libel and criminal accusation, and a recantation would not have satisfied the persons injured; but, from

* Strype's Annals, iii. vol. 1. b. c. 27. A. 1585.

† The doctors before whom he appeared are *justiciarii dominæ reginæ*.—There were prosecutors. He was bound in recognisance to appear before the vice-chancellor—he was liable to prosecution in the court from a variety of persons—he might appear by himself, or attorney, as in a criminal case, which could not be done where opinions only were to be discussed, and a recantation to be proposed.

an imperfection in the register, the punishment assigned for this offence cannot be ascertained *.

BAMBRIDGE AND JOHNSON.

IN the next year the university was in considerable degree of ferment, occasioned by the sermons of Cuthbert Bambridge, and Francis Johnson, fellows of Christ college, against the episcopal government of the church of England. For these sermons they appeared before the vice-chancellor and heads on January 23, 1588, and being required to answer upon oath the questions proposed to them, and refusing to comply with this requisition, were committed into safe custody. Against this conduct they protested, declaring at the same time their readiness to appear before the chancellor, to clear themselves of any crimes laid to their charge, or to receive any punishment which he should assign. Both parties wrote to the chancellor upon this occasion, who, in reply to the letter of the heads, intimated, that there had been too great severity in their proceedings; and recommended, that the two delinquents "should not be dealt rigorously withal." The heads answered, "that they dealt with them in civil and courteous wise, with offer of conference, as of intent to persuade, and not to force them;" but the preachers, taking advantage of the chancellor's expressions, insisted upon it, that, as there was no mention of answering upon oath, he was clearly of their opinion. This occasioned another letter from the heads, to learn the chancellor's mind concerning the oath; and he, in return, told them plainly, that they had taken a very hard course indeed with the preachers, by detaining them so long in prison. In their next letter, the vice-chancellor and heads endeavoured to

* Strype's Annals, iii. vol. 2. b. c. 13. A. 1587.

vindicate themselves, acknowledging "it so to have been, if they had not first essayed by all good and gentle means to prevail with them (the preachers);" but as the law allowed it, and "it was to be justified by the word of God, they thought they were bound, as in convenience and equity so in discretion and duty, thus to procede." Some reflections were thrown out against the disciplinarian party; and they urged, that "they found by experience of this one dealing, that the same had done no little good in the university; for that since that time, some stirring tongues had been very quiet, who before spared neither state nor persons of the greatest honour and merit, living nor dead." This letter was subscribed by the vice-chancellor and four heads; but two protested openly, and one privately, against their proceedings.

Their fate
uncertain.

The cause being now before the chancellor, the opinion of the civilians was taken, for his information, who determined, that "the parties here were bound by law to answer upon their oath;" and it appears that the preachers did in consequence give an account of their sermons upon oath, and answers to the passages declared exceptionable in them. It would be tedious to transcribe the whole of this controversy, as happily in the present days it is considered of little importance: but the fifth article against Bambridge, which probably gave the greatest offence to his judges, deserves, for the sake of shewing the spirit of the times, to be here inserted. It runs thus: 5. "If you mind indeed to awake. As tho he had irreverently reflected upon the sleepiness of the doctors at sermons." In reply to which he says, "To the fifth I answer I said thus, directing my speech to the doctors: If you desire indeed, I speak it with reverence, that they should awake from their sleep, meaning the townsmen, if you would have them forsake the works of darkness, and that Christ
Jesus

Jesus may be heard, provide that Christ Jesus may speak more often unto them." Whether the answers were satisfactory or not, from the distance of time it is not easy to determine: there is no account of any recantation being proposed or refused.

Bambridge was fellow of the college in 1590; but Johnson, who seems to have been more violent, and who held archbishops and bishops to be anti-christian, was in 1593 a prisoner in the Clink*.

BARET's CASE.

THE proceedings of this petty inquisition seem to have put a stop for some years to theological controversy in Cambridge; but in the year 1595 a dispute arose, which occasioned no small degree of animosity between the heads and the archbishop, the very man who had been the chief instrument in procuring them the means of tyrannising so much in matters of religion. William Baret, fellow of Caius college, in the term after Easter, vented in a latin sermon at St. Mary's several anticalvinistical doctrines, and treated Calvin and the other heads of the pretended reform much in the same manner as they in general treated their adversaries. It would be to little purpose to enter into the merits of this question at a time, when, after many changes of opinion on the meaning of the articles of the church of England, it seems to be doubted, whether they were intended to have any meaning at all†. The nature of the proceedings of the vice-chancellor and heads acting under a particular statute is the chief point under consideration,

* Strype's Annals, an. 1588, iii. b. 2. c. xx. and Ap. lxx, lxxi.

† See Paley's account of subscription to the articles, in his Moral Philosophy.

and much light is thrown upon the subject by their conduct in this transaction*.

Conduct of vice-
chancellor and
heads.

The vice-chancellor first confer'd with the offending preacher, to bring him to see his errours. Not being convinced by the arguments of the vice-chancellor, he was called before a meeting of the heads in the consistory, in which were present, at three several long meetings, the vice-chancellor's deputy, and eight of the heads. At these conferences, as they are termed, "he was laboured with to be won from his errours, and to make a quiet end by voluntary publick satisfaction." He persisted however in maintaining his opinions, and was consequently ordered to revoke his errours, in the manner prescribed to him by the vice-chancellor and the major part of the heads. To this there was some demur from the preacher, who requested, that his recantation might be made in the regent house, and not at St. Mary's. This request was not granted, and he read at St. Mary's the recantation delivered to him in writing by the vice-chancellor; but in such a manner as to give great offence, and to provoke many members of the university to testify in writing their indignation at his conduct.

BARET's RECANTATION.

THE form of recantation delivered to him proves, that though there was little liberty of conscience in the reign of Elizabeth, yet no one could be called upon, even in those intolerant days, to recant, without the specification of a single error. The recantation was drawn up in Latin, to the following effect:

* Strype's Life of Whitgift, iv. 14.

“In a sermon delivered by me not long ago, most accomplished men, in the church of the university, many things fell from me both falsely and rashly asserted, by which I understand that the minds of many persons have been exasperated. For the satisfaction therefore of the university and of truth, which I have publicly injured, by this publick confession I review and revoke my errors.

“1st. I said, that no one in this weak world was endued with so much confidence or certainty of faith, unless, as I afterwards explained myself, by revelation, that he could be sure of his own safety. Now however I profess before God, and acknowledge conscientiously, that the justified by faith have peace towards God, that is, reconciliation with God, and by faith stand with grace in him. They ought therefore to be sure of and secure in their safety with the certainty of faith itself.

“2dly. I asserted, that the faith of Peter could not, but the faith of others might fail; because, as I then said, the Lord did not pray for the faith of every one. Now however, being taught by a better mind and sounder judgement, by the words of Christ himself, John xvii. 20, I do not pray only for these, that is, the apostles; but for those who, by their preaching, shall believe on me; I acknowledge, that Christ prayed for the faith of every one; and that, by the efficacy of this prayer of Christ, each true believer is so supported, that his faith can never fail.

“3dly. In that I said, that final perseverance was a proud security concerning a future event, a thing in its nature contingent, of which kind is the perseverance of every man, yet I did not call it only proud, but most impious: I now ingenuously confess, that the true and justifying faith, by which the faithful are most closely united
with

with Christ, is so fixed and so secure from futurity, that it can never be rooted out of the minds of the faithful by any temptations of the flesh, the world, or the devil himself. So that he, who has it once, will always have it; for by the benefit of this justifying faith Christ dwells in us, and we in Christ. Therefore it cannot do otherwise than increase, since Christ increases daily in us; and it must persevere to the end, since God bestows constancy.

“ 4thly. I affirmed, that in faith there was no distinction except in believers. In this I confess my error; for I freely acknowledge, that temporary faith, which by the testimony of Bernard is feigned, because it is temporary, is distinguished, not by measure and degrees, but by the thing itself, and differs from that saving faith by which sinners laying hold of Christ are justified before God to all eternity. Besides, I add, that James makes mention of dead faith; and Paul speaks of the love of him who worketh.

“ 5thly. I subjoined, that the forgiveness of sins is an article of faith, but not special, not of this man or that man; that is, as I explained, that a truly faithful man neither can nor ought to believe that his own sins are forgiven. But now I think otherwise, and ingenuously confess, that every truly faithful person by this article of faith, *I believe in the forgiveness of sins*, is bound to believe certainly, that his own sins are graciously forgiven. Yet it does not follow from hence, that this petition in the Lord's prayer, *Forgive us our sins*, is superfluous; for in that petition we pray both for the gift and the increase of faith.

“ 6thly. These words fell from me in my sermon: As to those who are not saved, I most firmly believe, and in contradiction to Calvin, Peter Martyr, and others, ingenuously

nuously profess, that I do thus believe, that sin is the true, proper, and primary cause of reprobation. But now being better taught I say, that the reprobation of the impious is from eternity, and that the opinion of Austin is the true one, namely, If sin were the cause of reprobation, then no one would be chosen, since God foreknows that all are contaminated: and, to speak ingenuously, I do not think and believe otherwise of the doctrine of election and reprobation, than the english church believes, and teaches in its articles of faith, in the article of predestination to this purpose, “Predestination to life is that eternal purpose of God, by which, before the foundations of the world were laid, he decreed assuredly in his own counsel, hidden indeed to us, to free from sin and perdition those whom he chose in Christ out of the human race, and to bring them as vessels made for honour through Christ to eternal safety. Whence they who are endowed with so excellent a gift of God, by his spirit working in due time, are called according to his purpose, obey the call through grace, are justified, are graciously adopted as sons of God, are formed into the image of his only begotten Jesus Christ; being conformable in good works, walk holily; and, lastly, by the mercy of God, attain to eternal safety, &c.”

“Lastly, Against John Calvin, a man of the greatest merit in the church of Christ, I rashly uttered these words: That he dared to exalt himself above the truly highest and almighty son of the highest and almighty God. By which words I confess that I have greatly injured this very learned and truly pious man; and I beseech you, in the most humble manner, to forgive so rash an expression.— Besides, I inveighed very bitterly in some things against Peter Martyr, Theodore Beza, Jeremy Zanchy, Francis Junius, and others of the same religion, luminaries and ornaments of our church, calling them by the odious name

name of Calvinists, and blackening their characters with other ignominious words. Now, as our church deservedly holds these men in reverence, it was not right in me to hurt their fame, lessen in any manner their reputation, or to discourage our own people from reading their very learned compositions.

“I repent therefore and am sorry for the very heinous offence which I have publickly given to this most celebrated university, the temple of true religion, the tabernacle of piety; and I promise, that by the assistance of God I will never offend in like manner for the future. I most earnestly beseech you also, most accomplished men*, and all others whom by the preceding articles, or by any other part of my sermon, I have offended, that on this proof of repentance ye will kindly forgive me †.”

CONDUCT OF THE JOHNIANS.

SO strong a dose was not relished by the penitent; and as there were many things in it, either capable of dispute, or clearly not within the letter and meaning of the statute, he had good grounds for complaining to the archbishop on the conduct of the heads and some members of St. John's college, who at that time had been extremely active in circulating a libellous account of his sermon. This libel he sent to the arch-

* By most accomplished men, or *ornatissimi viri*, are meant the heads and chief academicks. What they were in those days may be presumed, from an extract of Sir P. Sidney's *Arcadia*. The shepherd says, “They may talk of book learning what they will; but, for his part, he never saw more unseatlie fellows than great clerks were.” B. 11.

† Strype's *Life of Whitgift*, Ap. page 185.

bishop, with his own remarks on each article: it ran in the following words:

A copy of Mr. Barret's propositions, which he held at S. Maries in Cambridge. As given out and dispersed by some of S. John's college.

I. A man may fall out of the favour of God, and in again; yea, quite out of the state of grace, being in.

I have not once named justifying faith in all my sermon.

II. A man may utterly and finally lose justifying faith.

I spake of the ordinary certainty, whereby a man ought not to be secure; and of none other, as it appears in my sermon.

III. A man cannot be sure of his salvation in this world: yea, it is high presumption to think he may be.

IV. Remission of sin in the creed is general, not particular.

I said not so; but only, that S. Paul had a revelation.

V. If S. Paul was sure of his salvation, it was by revelation.

I did not say it was the highest, but only the first moving cause.

VI. Sin was the true, proper, and highest cause of reprobation.

I said not so, but that it was inconsideratè dictum.

VII. Beza blasphemed, who said, *Donum fidei a dono perseverantiae separari non potest.*

I said,

I said, he blasphemed in saying, Our Saviour almost dispaired; and yet we ought not once to fear.

If I said any such thing, I submit myself willingly to any punishment that your grace shall think meet to inflict upon me; but, in truth, I said not one word to that purpose.

VIII. Calvin blasphemed most horribly, who said, Christ in his agony almost dispaired of his salvation; and yet a man should not.

IX. Calvin, Beza, Luther, P. Martyr, and Junius, were false guides; and he marvelled that we taught not so, and bewailed the iniquity of our time, that we should be so misled by such young teachers*.

ARCHBISHOP DISPLEASED WITH THE HEADS.

THE archbishop now took up the cause, and, expressing his anger at the precipitate conduct of the heads, put a stop for a time to farther proceedings; for it was their intention, that the delinquent should make another recantation, and perform it in a more decent and humble manner. The archbishop tells them in his letter, that his reasons for disliking their manner of proceeding against Baret were these:

1. "The hasty and rash proceeding against him; not giving unto him liberty to confer with others, nor time to consider of those points wherewith he was charged; a peremptoriness not used by the Papists, nor in any well-governed church of Protestants; and, indeed, a rash and intolerable consistorian-like kind of proceeding.

* Appendix to Strype's Life of Whitgift, p. 139.

2. “ In that they knowing his care to have these new occasions of contention appeased, and to that end writing his advice therein to the vice-chancellor, to be imparted to the rest of the heads; knowing also, or at least ought to know, that, in matters of religion, it had pleased her majesty to commit the special care to him, (that university also being within his peculiar charge, in respect to the vacancy of the bishoprick of Ely); yet they would not vouchsafe to make him acquainted therewith, as in duty they ought to have don; which, therefore, the archbishop added, he could not take in good part, neither yet suffer.

3. “ For that they had proceeded in matters wherein they had no authority; no, not by the statute by them alledged; these points being not within the letter or meaning thereof, although they had suffered, and daily did suffer, both in their colleges, and in other places in town, men to offend against the very letter of that statute, without reproof.

4. “ For that, in some points of his retractation, they had made him to affirm that which was contrary to the doctrine holden and expressed by many sound and learned divines in the church of *England*, and in other churches likewise, men of best account, and that which, for his own part, he thought to be false, and contrary to the scriptures; for the scriptures were plain, that God, by his absolute will, did not hate and reject any man, without an eye to his sin. There might be impiety in believing the one, there could be none in believing the other; neither was it contrary to any article of religion established by authority in this church of *England*, but rather agreeable thereunto.

“ Likewise to affirm, *neminem debere esse securum de salute*, to what article of religion established in this church, it was contrary he saw not, seeing *security* was never taken
in

in good part; neither did the scripture so use it: and what impiety was it to affirm, that a man ought be *certus de salute*, but not *securus*?

“To say also, that *credentium fides*, or *electorum fides*, *poteſt deficere totaliter ſed non finaliter*, he asked again, Against what article of religion eſtabliſhed in this church was it? That it was a matter diſputable, and wherein learned men did, and might diſſent, without impiety.

“*In fide nullam eſſe diſtinctionem, ſed in credentibus*, he took to be an error; but yet without the compas of their authority, having no article directly againſt it; and an error of that nature, that might be ſolved by diſtinction, worthy of reprehension, not of recantation, for any thing he [the archbiſhop] could yet underſtand.

“*Remiſſionem peccatorum eſſe articulum fidei, ſed non ſpecialem, nec hujus, nec ullius*, was likewise untrue; and that if he had in that maner and ſort affirmed it, he ſhewed therein his ignorance; wherein he ſhould have been better inſtructed, and in more Chriſtian maner.

“To traduce Calvin, and other learned men, in pulpits, he could by no means like: neither did he allow the ſame towards Auguſtin, Jerome, and other learned fathers, which, nevertheleſs, had often and many times been abuſed in the univerſity without controwle; and yet if a man would have an occaſion to controwle Calvin for his bad and unchriſtian cenſure of K. Henry VIII. or him and others, in that peremptory and falſe reproof of this church of *England*, in divers points, and likewise in ſome other ſingularities, he knew no article of religion againſt it; much leſs did he know any cauſe why men ſhould be ſo violently dealt withal for it, or termed ungodly, popiſh,

impudent; for the doctrine of the church of *England* did in no respect depend upon them.

“The premisses considered, he thought they had dealt in matters not pertaining to that jurisdiction; and, if it remained doubtful which of these points were contrary to the doctrine professed in the church of *England*, and which not, he hoped they would not take upon them to determine thereof.”

In the end, thus the archbishop concluded: “That if
“they meant not to use him in these cases as a friend, he
“must use them according to his place, and according to
“the authority which God and her majesty had committed
“unto him; and that if they had used these matters
“according to his directions, and as in good discretion
“they ought to have done, *Cambridge* had been as free
“from these controversies as other places were; whereas
“now they were offensive to their friends, and a rejoicing
“both to the common enemy, the papists, and to
“their private ill-willers*.”

The heads, however, having once committed themselves, found it no easy matter to draw back; and letters and messages passed and repassed between these theologues and their chief. By way of screening themselves from the power of Lambeth, they apply to their chancellor, lord Burleigh, and pretend that they had done nothing which their statutes did not allow. Upon this point the archbishop observes in one of his letters, “that for his
“part he never thought to infringe any privilege of the
“university, but had studied more in defence thereof
“than any there remaining; that the statute, which they

* Strype's Life of Whitgift, p. 440.

“ then alledged, had been procured by his means to his
 “ lordship, and therefore he had good cause to know the
 “ meaning thereof: that in this cause he had only dealt
 “ with them by persuation and advice, in respect of the
 “ peace of the church, and for the avoiding of new
 “ controversies, but that they had not regarded him
 “ therein.”

Heads humbled. This language brought the heads to some humility; and, in compliance with their chancellor's order, they submissively petitioned the archbishop, that some mode might be devised to prevent such men as Baret from spreading their dreadful errors. Thus the cause fell into the archbishop's hands: Baret was twice examined by him; the sentiments of the most learned men of the times were taken; another recantation was drawn, to which, with some difficulty, his assent was obtained, and this mighty dispute was hushed up in as easy a manner as was consistent with the dignity of the contending parties. The new recantation was in latin, and to the following effect:

“ Reverend fathers, and dear brethren, in my sermon
 “ *ad Clerum*, preached some time since before you, I as-
 “ serted some things, which gave much offence to the
 “ ears and minds of many, and that deservedly; for I said
 “ confidently, and stiffly maintained, First, That a tempo-
 “ rary and unfruitful faith is al one with a true and sav-
 “ ing faith; and that there is no difference or distinction
 “ in faith. Secondly, That it is given to none certainly
 “ to know by a certainty of faith that he is elected.
 “ Thirdly, That none can in this frail world be certain of
 “ his salvation by a certainty of faith. Fourthly, That
 “ remission of sins is an article of faith, but not special
 “ of this or that person. Fifthly, That Peter's faith onely
 “ could not fail. Sixthly, That Christ prayed for Peter's

“ faith onely, that it should not fail. Seventhly, That David
 “ knew not that he could not fal away. Eighthly, That
 “ the gift of perfeverance is a future contingent. Being
 “ now overcome by truth, and, according to the appoint-
 “ ment and command of my superiors, I do freely,
 “ openly, and ingenuously, and from my heart, revoke,
 “ condemn, and detest these assertions, as being contrary
 “ to the sacred scriptures, and the orthodox faith, law-
 “ fully approved in the church of *England*. And I do so-
 “ lemnely promise, that hereafter I will never profess
 “ them, or defend them, nor think otherwise of religion
 “ than now the church of *England* thinketh, which I do
 “ believe to be the true church of Christ; and I am sory
 “ I spake so reprochfully of those chief men, Martyr,
 “ Calvin, Beza, Zanchy, whom, I confess, have deserved
 “ excellently wel of the church of Christ*.”

Archbishop's account This business seems to have been
 of the dispute. brought to an end, after much confer-
 ence and persuation with Baret, according to the wishes of
 the archbishop, about the middle of January; and a recapitulation of the whole was drawn up by the prelate, in these words:

I. “ Baret preached a sermon at Cambridge *ad clerum*;
 “ wherein divers unsound points of divinity were uttered,
 “ to the offence of many.

II. “ Baret therefore was convented before the vice-
 “ chancellor and heads, and enjoyned to recant.

III. “ Baret did read a recantation prescribed unto him,
 “ but not in such a sort as satisfied most of the hearers.

IV. “ Baret thereupon was convented again, and
 “ threatned to be expelled the university.

* Life of Whitgift, p. 458.

V. “ Baret

V. " Baret hereupon complaineth to me; and I writ
 " down to the vice-chancellor, &c. to desire them to stay
 " further proceedings against him, until such time as I
 " might understand the causes of their proceeding, being
 " matters of divinity: and the rather, because I found
 " some errors in that recantation, which they had caused
 " him to pronounce; which errors also were afterward
 " confessed by some of them, and were manifest.

VI. " Hereupon they writ to my lord treasurer, their
 " chancellor, and complained grievously of Baret; and de-
 " sired, that, by his authority, they might procede to the
 " punishing of him.

VII. " My lord answered, that he would confer with
 " me, and refer the matter to my hearing.

VIII. " But that being disliked by the party that was
 " sent about the business, as being supposed to be repug-
 " nant to their privileges, it pleased his lordship to write
 " his letter to the vice-chancellor and others, to procede
 " against Baret.

IX. " Which when I understood, I writ to his lordship,
 " and desired him to cause stay to be made from further
 " proceeding in this cause, until better consideration were
 " had thereof; some of the things called in question be-
 " ing deep points of divinity, and wherein great learned
 " men did vary in opinion.

X. " His lordship accordingly did cause stay to be made.

XI. " Then I desired of the vice-chancellor, that some
 " might be sent unto me, instructed in these causes; and
 " that Baret might come up likewise; to the end I might
 " the better end the controversies. Al which was per-
 " formed.

XII. "The dean of Ely, and Mr. Dr. Whitaker came
 "unto me, and so did Baret. I found that Baret had
 "erred in divers points. I delivered mine opinion of
 "the propositions brought unto me by Dr. Whitaker;
 "wherein some few being added, I agreed fully with
 "them, and they with me.

"And I know them to be sound doctrines, and uni-
 "formly professed in this church of *England*, and agree-
 "able to the articles of religion established by authority.
 "And therefore I thought it meet that *Baret* should in
 "more humble sort confess his ignorance and error:—
 "and that none should be suffered to teach any contrary
 "doctrin to the foresaid propositions agreed upon.

"And this is the sum of al this action. And if this
 "agreement be not maintained, further contentions will
 "grow, to the animating the common adversaries, the
 "*papists*: by whose practice *Baret* and others are set on;
 "some of his opinions being indeed popish*."

BARO's CASE.

THE points, which Baret had discussed in his
 sermon, are of too intricate a nature to be easily
 settled, even by laborious students; and the archbishop,
 aware, perhaps, of the difficulties attending the contro-
 versy, and willing to retain his own authority, and pre-
 serve what is called the peace of the church, drew up nine
 articles, which, being sanctioned farther by the autho-
 rity of the archbishop of York, on the 20th of November,
 1595, were sent to the heads, with strict injunctions, that
 for the sake of peace and quietness, no scholar should

* Life of Whitgift, 458.

depart from them in his publick exercifes. With whatever good intentions these articles were framed, a considerable body in the univerfity was difpleafed with them, as was the queen herfelf, with the exercife of an act of power, infringing upon the rights of the head of the church. In defpite of thefe injunctions, Baro, the margaret profeffer, preached on the 12th of January following, on the difputed topicks, and, in confequence of the opinions maintained in his fermon, was, on the 17th of the fame month, convened before the vice-chancellor and heads. At this meeting the vice-chancellor declared, that feveral bachelors in divinity had complained of the fermon, and of the preacher's difobedience to the mandate lately fent round to every college, to put a ftop to farther difputation. A long converfation then took place between the profeffer and the heads, on the fubject of the complaint; and, in the conclufion, the vice-chancellor tells him: "It is true, I perceive, that, in your fermon, you abftained very cautiously from the words and phrafes expreffed in the articles; but whether you delivered any doctrine contrary to thefe articles, muft be a matter of farther difcuffion. And fo the meeting broke up."

Prohibited from difputing on the Lambeth articles.

There were two other meetings on this fubject, on the 21ft and 29th. On the latter day, the preacher, who had been advifed by his lawyers not to give up a copy of his fermon, was peremptorily ordered to do it. With this order he complied on the next day, when the vice-chancellor, by virtue of his authority, ordered him to "abftain from thefe controverfies, propofitions, and articles, as well in his lectures, fermons, and determinations, as in his difputations, and other his exercifes." The heads now found it difficult how to proceed; they might commit themfelves again, as they had done in Bareſ's caſe; and they

they were unwilling to go to extremities, untill they had heard the opinion of the higher powers. In the mean time Baro was not idle, but wrote to the archbishop and the chancellor ; and the latter, in very strong language, expressed his disapprobation of the proceedings of the committee. Such a check had its natural effect with the heads : they went on no farther with the professor in the common way, but by throwing out insinuations against him, that he was a foreigner, and busy in other persons' matters, they contrived to make the place so disagreeable to him, that in the next year he resigned his professorship, and, by retiring to London, got rid of the childish attacks of the heads of colleges *.

COVEL's CASE.

THE instance of one Covell might have been brought in here, not so much to prove the exact mode adopted in cases of this sort, for the matter seems to have been hushed up, as to shew, that they had no idea, in those days, of calling a man under the statute, on sermons, into the vice-chancellor's court. The vice-chancellor informs the chancellor, that this Covell, fellow of Christ college, had inveighed, in a sermon, preached some time in December 1595, against the nobility, and in some sort also the bishops ; that he sent for him to answer to these points, and that he now wrote to his lordship both for want of sufficient assistance of heads of colleges, and because " he could not as yet, by way of counsel and persuasion, induce the said party to make voluntary, convenient, and publick satisfaction." He gave the same information also to the archbishop, who would have sent for Covell to Lambeth : but the vice-chancellor dissuaded him from this point, by suggesting that so severe a measure might occasion discontent, as being a breach of the uni-

* Life of Whitgift, iv. 17. 18.

versity privileges; and that he would rather try, by himself, and the heads in the place, to bring the offendant to a voluntary satisfaction*.

Observations on preceding cases.

From the above related cases, it was presumed, that the proper mode of acting under a very plain statute could not be doubted. They followed within a few years after the granting of the statute, and there appears in them nothing like the process of a vice-chancellor's court. There is not an accuser, nor an open examination of witnesses: they want the formality of accusation, defence, proctors, publick summing up, and sentence of the judge. No appeal was thought of, except in the first case, and then properly denied, because there is no authority in the statutes for an appeal from a meeting of vice-chancellor and heads to the senate of the university. If there had, indeed, been any ground for this appeal, must it not, in those times of ferment, when the senate was little inclined to assent to the authority of the heads, have been frequently claimed? but the persons likely to fall under the penalty of the statute, considered themselves as in a situation to gain relief from their chancellor or the archbishop. The forms of recantation also express specifick opinions, and these opinions were all advanced in sermons. But to make the matter still clearer, a more recent case was brought forward; and, as in this century the same mode of proceeding was adopted as prevailed in the reign of Elizabeth, there is every reason to believe, both from the words of the statute, and the authority of precedents, on which modern lawyers dwell so much, even when they contradict the law, that a supposed offence against the statute on sermons was never, till the late instance, thought to be cognizable in a vice-chancellor's court.

* Life of Whitgift, p. 481.

WHISTON'S CASE.

ON October 22, 1710, William Whiston was summoned by an esquire bedell to appear before the vice-chancellor on the afternoon of the next day. In obedience to this summons, he went with a friend to the vice-chancellor's lodge, when, his friend not being permitted to accompany him farther, he was conducted into an upper room, in which were present the vice-chancellor, nine heads of colleges, and the university registry. A book of sermons was immediately put into his hands, and he was required to own it; but, on his refusing to answer such questions, the university printer was sent for, who could, however, say nothing to the purpose, and no other witnesses were called, relating to this publication. The depositions of several members of the university were then read, stating, that in a lecture in one of the parish churches, Whiston had asserted, "There
 " was but One God; and that God the Father only was
 " that one God; that the Father was in all the antient and
 " primitive creeds mentioned to be the only God; that
 " the Son was indeed exalted above all creatures, and
 " made a partaker of many divine excellencies and per-
 " fections; and as such he was to be worshipped with
 " a sort or degree of divine worship." Similar opinions were deposed also to have been advanced by him at a coffee-house, in a meeting of the ministers of the charity schools. To these depositions Whiston said nothing, requiring only time for his defence, and copies both of the depositions read to him, and the statute, which he was supposed to have offended; subjoining also a solemn address to the company, on the nature of christian benevolence, and the certainty of its appearance one day before the tribunal of Christ, which most probably was
 looked

looked upon by these guardians of religion as marks of his simplicity, and words without meaning. The copies of the statute and the depositions were readily granted to him; the request for time afforded matter of long debate, during which he had withdrawn; and on being finally called in, the ensuing Wednesday was appointed to him for farther proceedings. Receiving another summons to attend on Wednesday, he made his appearance again at the vice-chancellor's, "but now in a lower parlour of the same lodge, none being present but his judges as before," the absence of two former heads being compensated by the presence of others. They now put into his hands a paper of opinions, which they ordered him to retract on the Monday following, or to expect a rigorous execution of the statute. The paper delivered was as follows:

"Positions published and spread about in the university of Cambridge by Mr. Will. Whiston, contra religionem, &c. Stat. Acad. 45.

1. * "That the Father alone is the One God of the christian religion, in opposition to the three divine persons, Father, Son, and Holy Ghost, being the One God of the christian religion.

"This position is contrary to the 1st, 2d, and 5th of the 39 articles, and to the Nicene and Athanasian creeds.

2. "That the creed commonly called the Creed of St. Athanasius, is a gross and antichristian innovation and corruption of the primitive purity and simplicity of the christian faith among us.

* Vid. Postscript thro'out. Vid. Sermons and Essays, &c. p. 213. l. 19. to 23. p. 215, l. 3, 4, 5, 6, 7. l. 9, 10, 11. 26. to 30. Mr. Thackham's Depos. Mr. Hughes Depos. Mr. Townsend, Mr. Macro, and Mr. Amyas' Depositions. Vid. Serm. and Essays, p. 276, l. 21. to p. 278, l. 6.

"This

“ This position is contrary to the rubrick before the said creed, and the 8th article.

3. * “ That the canon of the scripture, the rule and guide of a christian’s faith and practice, is that contained in the last of the ecclesiastical canons, ordinarily stil’d apostolical: which all along appears to have been the standard of the primitive church in this matter. I mean as including all the books we now own for canonical, and also the two epistles of St. Clement, and the constitutions of the apostles by St. Clement: to which the pastor of Hermas is to be added; as well as we have already added the apocalypse of St. John.

† “ That the doctrine of the apostles appears to be a sacred book of the New Testament, long lost to the christian church.

“ These two positions are contrary to the sixth of the 39 articles.

‡ “ Mr. Whiston undertakes to prove clearly, that the apostolical constitutions are the most sacred part of the canonical scriptures of the New Testament.

§ “ Mr. Whiston asserts, that the doxology, current in all these latter ages, “ || Glory be to the Father, and to the Son, and to the Holy Ghost,” was not the true christian doxology.

“ This position is against the doxology received and established in the publick liturgy.

Dated October 25, 1710.

* Vid. Serm. and Essays, &c. Note (1) p. 296.

† Proposals, &c. 1 Side Vol. III. l. 10.

‡ Proposals, 1 Side Vol. II.

§ Vid. Postscript, p. 47. l. ult.

|| Vid. Thackham, his Deposition.

“This paper was delivered to Mr. Whiston, the day and year above-written, by Mr. Vice-chancellor's order.

Witness my hand,

ROBERT GROVE.”

Protest.

Against this mode of proceeding, Whiston first read, and then delivered in a protest, stating his surprize, that they should not have conferred with him, as was formerly the usage, on his opinions; and that no one, through christian charity, had endeavoured to convince him of his errours. Many, on the contrary, attempted to undermine him; at one time, talking of him as a publick enemy to be expelled by grace; at another time, to be prosecuted in the ecclesiastical courts, or at the assizes: then the opinion of counsel was taken on the propriety of convicting him of heresy, and expelling him by Lucas's statutes; and now a remote university statute was thought of, which could not, in the present instance, be applied with justice. This statute related to publick sermons, and similar publick acts and lectures before the university; but he had never preached before the university, nor performed divinity exercises; and the only lectures he had given, were mathematical. With respect to his sermons in the parish church, he conceived himself amenable only to the bishop of the diocese; and books published in London, and private discourses elsewhere, could not be punishable by this meeting, since the crimes must be done publicè docendo, tractando, vel defendendo, in publick and solemn sermons, lectures, or disputations, before the university. He complained also, that, in so important a business, the chancellor had not been consulted, and that he had been so privately convened and interrogated, and, saving therefore to himself the liberty of making

ing farther objections to their proceedings, he sum'd up his protest in the following articles :

1. "That I am charged with breaking that 45th statute, which I have been incapable of breaking, because it only concerns such publick university exercises as I have never performed.

2. "That the place where most of the words are pretended to have been spoken, St. Clement's church, is utterly out of the jurisdiction of the university, and so no ways within this statute.

3. "That the want of the specification of the time, or the too loose specification of it, renders most of the depositions of no value.

4. "That words charged at so great a distance of time, cannot be sworn to so particularly as is necessary to affect me.

5. "That words spoken in private conversation, or at a coffee-house, or (written) in a private letter, can no way be within this statute.

6. "That no books printed and published at London, can be within this statute.

7. "That I ought to have been *convened publicly in the consistory*, and evidence fairly there produced against me in an open court; and not privately in a chamber, been asked many ensnaring questions, with the exclusion of even a single friend, who was willing to have been there to assist and direct me.

8. "That

8. "That any prior determination of the sense of this statute, before I have had council allowed me, or legal advice taken about its true extent and meaning, is of no force at all against me.

"And I desire and demand that I may have time given me, and council allowed me to argue the validity of these exceptions.

"October 25, 1710.

"WILL. WHISTON."

Exhorted to re-
cant.

Little attention was paid to this protest. The vice-chancellor gravely exhorted the protestant, under pain of condemnation on the following Monday, to leave his errors, and return to the church of England; and perceiving, after a little time, that he began to draw some of the heads into farther arguing and reasoning about these matters, the vice-chancellor took one of the candles and conducted him out of the house.

Banished.

On the Sunday following, Whiston received a summons to attend a meeting of the vice-chancellors and heads on the next day; from which, at first, he determined to absent himself; but afterwards altering his mind, he appeared before the heads, now twelve in number; and being asked by the vice-chancellor to retract his errors, he read a protest to them against all their proceedings, which he desired might be entered upon the records of the university. He then took his leave; and the following act, afterwards made publick, gives the determination of the meeting:

his benefits given, having asserted and spread about in this university, divers tenets contrary to religion received and established in this realm, hath incurred the penalty of the statute, and that he is banished

“ At a meeting of Mr. Vice-chancellor, and the Heads of colleges in the university of Cambridge, in the vice-chancellor's chamber, in king's college, in the said university.

“ Whereas it hath been proved before us, that William Whiston, master of arts, mathematick professor of this university, hath asserted and spread about in Cambridge, since the 19th day of April 1709, divers tenets against religion received and established by publick authority in this realm, contrary to the forty-fifth statute of this university; and whereas the said William Whiston being required and exhorted by Mr. Vice-chancellor, to confess and retract his error and temerity in so doing, did refuse to make any such confession and retractation; it is therefore agreed and resolved by us, the vice-chancellor, and heads of colleges, whose names are here underwritten, that the said William Whiston hath incurred the penalty of the foresaid statute, and that he be banished from this university according to the tenor of the same: C. Roderick, vice-chancellor; Jo. Ellys, Humf. Gower, Hen. James, S. Blithe, Joh. Covel, Jo. Balderston, Gabr. Quadring, Tho. Richardson, Ch. Ashton, Bardsey Fisher, Edw. Lany. Unde venerabilis vir Dr. Roderick, dominus procancellarius, assidentibus & consentientibus Johanne Ellys milite, Doctore Gower, Doctore James, Doctore Blithe, Doctore Covel, Doctore Balderston, Doctore Quadring, Doctore Richardson, Doctore Ashton, Doctore Fisher, Doctore Lany, collegiorum præfectis, sententiam ferendo decrevit, declaravit, & pronunciavit prout sequitur. In the name of God, Amen. I Charles Roderick, vice-chancellor of this university, do decree, declare, and pronounce, that Mr. William Whiston, mathematick

mattick professor of this university, having asserted and spread abroad divers tenets contrary to religion received and established by publick authority in this realm, hath incurred the penalty of the statute, and that he is banished from this university."

"*Lata fuit hujusmodi sententia per dictum dominum procancellarium, presente me Roberto Grove, not. pub. & almae universitatis praedictae registrario *.*"

Treatment of
Whiston accounted
for.

The severity, with which Whiston was treated, is easily accounted for. About that time the nation was, by Sacheverell's trial, alarmed with the cry of danger to the constitution in church and state; that bigot had received support from administration and the tories in general; and motions were made even in parliament for the suppression of irreligion and impiety. As Whiston's case is of great importance, the observations made upon it by one, whose integrity and knowledge are indisputable, and by whose friendly assistance every difficulty, in the present question, has been easily surmounted, will place the subject in the clearest point of view, and be highly satisfactory, it is presumed, to every impartial reader.

QUESTION.

Supposing Mr. Frend, by the publication of his pamphlet, to have offended against the statute de concionibus; was he on that account rightly cited to appear in the court of the chancellor, masters, and scholars, commonly called the court of the university, or of the chancellor, or vice-chancellor?

* Appendix to an Historical Preface to Christianity Revived, by W. Whiston, 1711.

ANSWER.

The affirmative side of this question can only be maintained by shewing, that such citation was agreeable to custom and precedent in like cases. The last instance of a person censured under that statute, occurred in the year 1710. In the month of October, in that year, the Rev. William Whiston, M.A. was banished from the university; and as there is no reason for imagining, that in the mode of proceeding against him, any deviation from ancient practice took place, either through ignorance or design, that mode may fairly be considered as the measure of former proceedings, in cases of the same kind, and the rule of future ones.

Now there are several circumstances in Mr. Whiston's account of his banishment, which are totally irreconcilable with the idea of a trial in the court of the university; but are very consistent with that of a private judgment by the vice-chancellor and other heads of colleges.

1st. The court of the university secures the attendance of the parties, during its continuance, by one citation: Mr. Whiston received three distinct summonses by a bedell; that is one each time his attendance was required; and it is observable, that two of the three were on *Sundays*.

2ndly. The court of the university is a publick and open court: it is opened, adjourned, and dissolved by proclamation, the yeoman bedell performing the office of cryer. Mr. Whiston carried with him a single friend to the vice-chancellor's lodge; but was obliged to appear before the vice-chancellor and heads *alone*.

3rdly.

3rdly. The court of the university compels the attendance of witnesses. When Mr. Whiston refused to avow himself the author of a book, he was told, that the vice-chancellor would have an order from the chancery to oblige the bookseller to attend.

4thly. The order of proceeding in the court of the university, is by citation of the parties, exhibiting the charge or articles, and swearing the witnesses. But the depositions of the witnesses against Mr. Whiston, were not taken in his presence, but at a meeting of the vice-chancellor and heads, which took place before he was first summoned to attend. This appears both from Mr. Whiston's own account, and from the paper written by the registry Grove.

5thly. Mr. Friend's sentence is said to have been passed at a *court* holden; Mr. Whiston's at a *meeting* of the vice-chancellor and heads.

6thly. A sentence passed in the court of the university, being publicly delivered, does not require the attestation of a publick notary or other officer: that passed on Mr. Whiston was attested by Grove, publick notary and registry of the university.

7thly. For the same reason the publication of such a sentence in any other part of the university is unnecessary. But publication was made, by a bedell, of the sentence passed on Mr. Whiston by the vice-chancellor, &c. in scholis physcis, on the 2d of November following.—The register of the university has not been yet examined with respect to this fact, but there is no reason to doubt it.

The language of some parts of Mr. Whiston's account*, might certainly be produced in favour of the affirmative side of the question; but the facts it furnishes, must be allowed to form a strong argument in support of the other side.

There are two considerations that ought to give weight to any mode of proceeding authorised by the vice-chancellor and heads in 1710. They lived near the times, in which the statute had been frequently executed; and they had one mean of information respecting the earliest instances, which is not now enjoyed, as they were possessed of a book, called Liber Utinam, containing those instances, which has since been lost.

DUCKET'S CASE.

DUCKET's case was brought forward, to shew the difference of proceeding in general cases against religion, and the particular one under the statute so often mentioned. Ducket had declared himself an atheist. For this crime he was summoned on the 17th Feb. 1738, to appear in the vice-chancellor's court, and on his appearance on the next court day, on the 23d of March, with the accuser, or, as he is called, the promoter, Mr. Eglington, the court adjourned, on account of Bentley's indisposition, from the Consistory to Trinity college — There the accusation was formally laid; evidence was

The attorney general wished to take advantage of Whiston's complaint of the secret mode of proceedings; but his ignorance of the antient practice and its propriety is no argument against them. The facts are the great points to be considered in this and the preceding cases which concur in pointing out Whiston's error, an error very likely to be made by a man little inclined to investigate the proceedings either of vice-chancellor's courts, or consistorial meetings.

brought;

brought; and the vice-chancellor, on summing up the whole, declared Duckett guilty, convicted of the crime of atheism, and, with the consent of the heads, expelled him the university. Here every thing was transacted in legal form; no recantation was proposed or thought of. For a prophane and blasphemous libel, entitled David's Prophecy, Waller bachelor of arts of Trinity college was summoned to appear in the vice-chancellor's court on the 25th of June 1752, on the accusation of Zachary Brooke, a fellow of St. John's college, and treated in the same manner.

AFFIDAVITS FROM THE UNIVERSITY.

The application to the court of king's bench was made in the Easter term of 1794, when a rule was granted for the university to shew cause, why William Frend should not be restored to those privileges and franchises, of which he conceived himself to have been unjustly deprived; and in consequence certain persons were appointed in the university to transact the business, under whose inspection affidavits made by doctors Colman, Farmer, and Kipling, were brought forward, which seem to confirm in a still stronger manner what has been advanced in the preceding pages.

Affidavits of
Colman and Far-
mer.

The affidavits of doctors Colman and Farmer ran nearly in the same words, stating, That they had been the former twice, the latter once vice-chancellor; that they had resided forty years in the university, and did not know of any court of the vice-chancellor and heads of colleges distinct from the vice-chancellor's court, which was held at the discretion of the vice-chancellor for the time being

in his lodge or chamber, or in the consistory, law schools, or in any other publick place, nor of any jurisdiction, which the vice-chancellor and heads of colleges possess or exercise distinct from that which the vice-chancellor possesses and exercises in his court; and that it is made necessary by the statutes of the university, and has always been the usage of the said court, as far as they knew, for a majority of the heads of colleges to assent to the vice-chancellor's sentence of expulsion.

Remarks on foregoing affidavits.

These learned and pious gentlemen may have told the truth, as far as it relates to themselves, for who can take upon himself to measure the extent of their knowledge: but they unfortunately forgot to state, that not a single case had occurred within their memory of a person being punished under the statute in question; for Whiston was banished many years before either of them was in existence. They shelter themselves too perhaps under the word Court, not considering, that both of them have been frequently present at meetings of the vice-chancellor and heads, in which much academical business is transacted, such as the interpretation of statutes, and that monstrous usurpation, the making of decrees in matters of discipline. The question is, whether a case cognisable by the statute *de condicionibus* is to be decided in such a meeting, or in an open court * as is that of the vice-chancellor. Of this question their long residence in the university did not permit them to decide, for no such case had fallen within their experience. Their oath upon a matter of opinion

* To make their oath of use in this case, they should have sworn, that the vice-chancellor could hold his court in a private room in his lodge, to which none but the culprit, the registry and the heads, as in Whiston's case, had admittance. In Ducker's case, the court was held in the accustomed place of judicature, and from thence adjourned, on account of the illness of Bentley, to a room in his lodge, equally on this occasion publick.

of this sort can have but little weight, as a decision depends not upon their oath, but the meaning of the statute, the comparison of it with similar statutes, and the precedents alledged on both sides*.

Kipling's affidavit. Kipling, the promoter, made affidavit, that he had examined the statutes and other papers of the university, from which he had extracted the statutes granted in the first and twelfth years of Elizabeth on the office of vice-chancellor, also the statute de concionibus, and the cases of Rush, Adams, Whiston, Waller, Duckett, Latham, and two other scholars.

RUSH'S CASE.

A SOME time in September 1609, probably the 10th†, Rush offended by a sermon preached at St. Mary's, and after a summons he appeared on the 15th of the same instant, before a meeting of the vice-chancellor and heads, in

* It is curious to observe in what manner a person, who labours under the suspicion of speaking or acting against the prejudices of the ruling powers, is treated by even the inferiour agents of the law. In the reports of this case, given by Charles Durnford and Edward Hyde East, it is remarked, that affidavits "were filed by the vice-chancellor and several other respectable members of the university, some of whom had resided there for forty years." On reading this, one would suppose that there had been plenty of affidavits upon this occasion; whereas the truth is, that they were signed only by three persons, Colman, Farmer, and Kipling, who must be respectable men, all respectable men, since the title has been conferred upon them by Charles Durnford and Edward Hyde East.

† It is said the 10th, as the MS. is not very clear in this place. This and the following cases are taken from the copies of Kipling's affidavit delivered by the university attorney, to the attorney on the other side.

the chamber of Dr. Jegon the vice-chancellor. In this case there was no accuser: the vice-chancellor asked Rush, whether he had his late sermon written or not, and on answering that he had it not, and afterwards confessing that he had the most part of it, and in a jesting manner saying, that he wished it were worth their worships' sight, he was admonished by the vice-chancellor to bring "his
 " last sermon preached in St. Marie's, penned so near as
 " possible he could in the very words he Mr. Rush then
 " and there uttered it, and so as he may take his corporal oath, that it is the same he then preached, so near
 " as he shall know or believe, upon the second friday in
 " the term in the consistory," there to expect the further progress of this enquiry. On the 17th he appeared again in the same lodge, and was " charged by Mr. Vice-chancellor and his assistants with many uncharitable speeches,
 " uttered in his funeral oration in Christ's colledge, tending to the disgrace and discredit of Mr. Doctor Barwell deceased, and also with other matters then by him uttered." To this Rush said, " That he did believe, if any
 " conscionable man had heard him, he would thinke the
 " better of him for it, and not the worse." The vice-chancellor then admonished him three times to deliver up the sermon in writing, which he expressly refused to do, and for contumacy was ordered into confinement till he should produce his sermon*. On the friday above-mentioned, he appeared in the custody of one of the esquire bedels, and then delivered a paper, which he declared upon his oath to be " the trewe copie of his oracion uttered at Mr. Doctor Barwell his funerall, so farr as he

* In the margin of the paper sworn to by Kipling, it is observed, that on the 14th Rush had been admonished in the vice-chancellor's chamber, to deliver a copy of his sermon; and from the confused manner in which the whole case is related, it is evident that the business could not have been transacted in a court of law, where there would have been a regular accusation, and each day's process would have been defined.

" doth know or believe ;" and being now asked for his
 sermon preached at St. Mary's, he delivered a book, of
 which, because he said " that Mr. Vice-chancellor and
 " his assistants could not well read it without directions,
 " and for that himselfe made some doubt, that it was not
 " there written in all points as he uttered it in St. Ma-
 " rie's," he was treated as contumacious, admonished to
 bring this sermon ready written on monday next, and in
 the mean time remanded into custody. On that day he
 appeared in the consistory, gave his consent to the time,
 place, and judges, and renounced all advantage to be de-
 rived from the want of a sufficient number of heads, and
 having delivered a faithful copy of his sermon was dis-
 charged out of custody ; but, as it appeared to the meet-
 ing, " that he had wronged manye by his sermon preached,
 " and by his oracion uttered at the sayd funerall, and for
 " that it was to be feared, now he had his libertye, he
 " would or might again offend by publickly preaching, or
 " in open assembly," and for other causes, he was sus-
 pended by the vice-chancellor in the name of the Father,
 etc. from all his degrees, and prohibited from praying
 or preaching within the university, till the suspension
 was taken off, and the farther consideration of the ser-
 mon was defer'd to the 27th of October. On that day
 the heads met again, and Rush was interrogated on va-
 rious points in his sermon, and after much conversation
 he promised to stand by their decree ; " so they urged
 " him not against his conscience, to saye blacke was whyte
 " or whyte blacke : " upon which he was admonished to
 bring on the next day in writing a speech to be publickly
 delivered by him in satisfaction of the severall points with
 which he had been charged. In the morning he appeared
 before the meeting, but did not satisfy it, and on his ap-

• Multis hinc inde ventilatis.

pearance

pearance in the afternoon it was decreed, on a similar submission as he had made before, " that he should on
 " the morrowe immediately after the afternoon sermon,
 " in St. Mary's church, in the minister's pew or seat,
 " there publicly and openly reade with an audible
 " and loude voice, the whole contents, which shall be
 " the schedule" delivered to him by the vice-chancellor
 before eight in the morning.

At eight o'clock on the next morning the paper drawn up by the meeting was delivered by the vice-chancellor into Rush's hands, in the presence of the notary publick; which Rush refused to read, " saying, he had Mr. Perkins
 " and Franciscus Junius of his side, and therefore he
 " would never ly against his owne conscience."

In consequence of this refusal he was bound with his sureties, John Atkinson and Thomas Perkins, in a recognisance to appear within four days after a summons left for him at his college; and on the third of January following, he appeared again at a meeting of the heads, when he was admonished thrice by the vice-chancellor to read the contents of a paper, then put into his hands, in the forenoon of the next Sunday, " if there was no sermon in the afternoon; or if there was a sermon in the afternoon, on the Sunday following, immediately after the sermon, before the psalme be songe, in the minister's pewe, in the bodye of the church of great St. Marie's." This recantation drawn up in the following words he refused to perform.

Recantation refused. " Whereas many christian auditors, wyse, godly, and religious, have beine offended with many things which I have not longe since uttered in a sermon in this place, justley reprehending not only my greate indiscretion, presumption, uncharitableness, rash and
 bould

boulde censuring, but also some strange and erroneous opinions I then was taken to deliver: I am now come in the same publique place (after sundrey conferences had with divers grave and learned divines of this universitie) to acknowledge my fault and to make satisfaction.

“And first, where in my prayer I used every unreverent and reproachfull speech agaynst the cleargy or some of them, terminge them the *gorbellyd clergie*, and also some offensive speeches which might be taken to touch authoritye or some attendinge in court, callinge them *develisb parasjts* in flatteringe and attributynge over much to some in higher place: upon better advisement, I now acknowledge my presumptuous bouldnesse therein.

“Further, in that I did then deliver these opinions in this manner and words, viz. That St. Paule and Moyse did fault and err in their desires, it cominge from the surge and source of a passion too earnest and hott, and not sufficiently bounded with the trew limits of pure charity, and also even our saviour Christ's prayer (*Father, if thou wilt this cup passe from me, but not my will but thy will be done*) came from nature, and without reason attendinge his understandinge all the whyle otherwise buyfied, and his resonable deliberacion not concurrynge therewith (for it is not necessarye that the resonable mynde should concurre with the tonge always, men speaking some tymes in their sleepe, and parats also learninge that facultye), and that his mouth with all the instruments of speech were wryed as it werre, and wrested to utter the summe and substance of his naturall instinct and inclynacion: and further, that our saviour Christ's prayer, though it were uttered by a person resonable, yet it was nothing in substance but nature's desyre and prayer, it directly and originally being the proper cause of it: and further, that the words of Christ were as the words of a man in sleepe,
and

and yet further, whereas in my confutation of Mr. Beza's judgment (being that the prayer of our saviour Christ came from a reasonable will), I uttered these words in answer: as I take it, it cannot stande; for how could he without tediousse and untimely troublinge and obtunding his father's eare (as I may soe speake) *pray that the cupp should pass from him?* I now, upon better deliberacion, doe with grieve and sorrow harte confesse before God and his angells and his whole assembly, that I have greatly erred in my sayd opinions publicquely delivered, and specially touching the poynts about the most holy, earnest, meritorious, and heavenly prayer of our saviour, in that his bitter agony suffered for our sinns, wherein my said speeches were not only erroneous, rash and presumptuous, but also such as might be taken to be dishonourable to our saviour, impious and profane, givinge just scandalle both to such as then heard me, and also further to whome the same and report thereof hath come.

“Wherefore I humbly beseech, first, almighty God, and next, you all (whome I have offended), to forgive me, (promisinge by God's grace to be more vigilant and circumspect hereafter) in that I shall publickly utter either in this or any other place.

“Which that I may the better performe, I humbly desire you to praye for me, and now to joyne with me in that most absolute forme of prayer which our saviour Christe himself hath taught us.”

Sentence. The final meeting was now held, and, on the 8th of January 1609, the vice-chancellor, in the presence of eight heads, passed sentence upon him for his refusal, in the following words:

"Whereas you Nicholas Rush, late master of arts and fellowe of Christ's colledge in this universitie of Cambridge, have preached and delivered in St. Marye's church in Cambridge aforesayd, the 10th of September last past, a certayne doctrine judged by me deputye vice-chancellor and the greater parte of the heads of colledges of the said universitie contra religionem seu ejusdem aliquam partem in regno Angliæ publicâ authoritate receptam et stabilitam; and being thereuppon covented before me John Duport doctor of divinitie, and deputye, and the heads, and also vice-chancellor of this universitie of Cambridge by me, with the consent of the greatest parte of the heads of colledges, strictly charged, injoynd sub pena juris, at a certayne daye, tyme and playce, to revoke and recant the sayd false and erroneous doctryne according to a prescript for me, and manner of words heretofore judicially to yourselfe exhibited; and because you the sayd Nicholas Rush have perempterely refused so to doe in manner and form so to you prescribed, I therefore the sayd vice-chancellor's deputye doe by that authoritye is to me comitted, and by vertue of the statute in that behalfe provided, viz. Libro statutorum academix, cap. 45^o, titulo De concionibus, by the consent of the greater parte of the heads of colledges aforesayd, doe pronounce and declare you the sayd Nicholas Rush incidisse in penam in statuto præ mentionatam, and to be utterly precluded and shut out of the sayd universitie and Christ's colledge, according to the contents and effect of the sayd statute, and doe soe accordingly *exclude and banishe* you by mye finall sentence or decree, which I give and publishe in this wrytynge.

Lecta & lata 8^o die mensis Januarij 1609,

Per me JO. DUPORT deputat. vican.

Ita testor JA. TABOR. registrar.

In present. mei *Johnis Wiseman*, bedelli, testis rogati.

Reflections on Rush's case. How this precedent can justify the proceedings against William Frend, it is difficult to perceive; for, 1st. It relates to a sermon preached at St. Mary's. 2d. There was not a promoter. 3rd. Rush was ordered to recant according to a particular form, which he refused to do, and yet sentence did not follow, as it must have done in a court of justice. 4th. The recantation finally proposed to him, specified his errors. 5th. The sentence was evidently pronounced in a private meeting, for not only the registry signs it, but a bedell is besides requested to be a witness to it. — 6th. The exclusion from college is mentioned in the sentence, as well as banishment from the university.

ADAMS'S CASE.

IN the case above related, the promoter has brought an instance of a person, on refusal to recant, banished from the university. The next produced by him is more full in some parts, though the supposed offender was not punished. On the 17th of July 1637, a meeting of the heads was held in the consistory, in which it was decreed, that Sylvester Adams, M. A. of Peterhouse, should be warned to appear on that day month, and bring with him the sermon he had preached at St. Mary's on the 25th of June. In consequence a summons was left at his college, but he did not appear at the next or subsequent meeting, to which the business was defer'd; and it was then farther put off to the 9th of October, when he appeared, and excused his absence, on the ground that he had not received any warning from authority, saying at the same time, that his sermon was either in Suffex or lost. Upon which he was admonished to bring a true copy of it, such that he could swear to, on that day month.

Questions in the
consistory. On the 6th of November he brought his sermon to the meeting, and took his oath, that the contents were so far as he knew the whole of what he had delivered at St. Mary's. On the 4th of December was another meeting, in which he was admonished to deliver up a copy of his sermon without quotations; and was asked first, Whether he held that "the confession of all knowne sins unto a priest is the only ordinary revealed meanes for salvation?" To which he replied, that he did not hold it. A second question was then proposed to him, Whether he held "that God doth not ordinarily pardon such knowne sins before mentioned, without such confession as is before mentioned?" To this question no answer appears.

Heads cannot
agree. At the next meeting on the 11th of December, he delivered another copy of his sermon, and was admonished to appear again on the Saturday following. On his next appearance, the "vice-chancellor was intreated to conceive a forme of acknowledgement, which should be propounded to Mr. Adams, to see if he would voluntarily undertake it." At the next meeting, on the 18th, the vice-chancellor objected to Mr. Adams certain opinions, maintained in his sermon, upon confession to a priest. Adams replied, that he had said nothing in his sermon, which he believed to be contrary to the doctrine of the church of England. A recantation was then read; and the question was put, "Whether the recantation read be a fit recantation, to be made by Mr. Adams in regard of the matters delivered in his sermon, whereof a copy is delivered?" Upon this question the votes were very much divided; four of the heads only voting in the affirmative, four positively rejecting the recantation, four voting for longer time to be given to Adams, and one declaring that as yet he saw no reason at all for recantation. Upon this difference of opinion,

F Adams

Adams was admonished by the vice-chancellor not to quit the town without his leave.

Recantation proposed by the vice-chancellor not admitted by the heads.

A long interval now ensued, in which most probably many attempts were made in private, to bring the heads to some better agreement; and on the 2d of March another meeting was held, in which Adams appeared, and the vice-chancellor, having read a form of recantation, asked him first, Whether he would voluntarily submit to the said recantation? but he expressly refused to subscribe it. He was then asked again, Whether he would acknowledge the said recantation? but he persisted in his refusal. The vice-chancellor then delivered his opinion and sentence, in writing, subscribing it with his own hands, in which he was followed by six of the heads; and five of the heads subscribed their names too, but in the negative. The paper was drawn up in the following words:

“At the consistory Martij 2^o. 1637, presentibus. Doctor Brownrigg, procan. Doctor Ward, Doctor Collins, Doctor Bambrugge, Doctor Paske, Doctor Bachcroft, Doctor Beale, Doctor Cosen, Doctor Laney, Doctor Love, Doctor Sterne, Doctor Holdsworth.

“I having diligently perused the sermon of Mr. Adams, fellow of Peterhouse in this university, concerning the necessity of confessing of our sins to a priest; and having fundry times convented him thereupon, and finding him still obstinate in his false doctrine, I doe sentence him so far forth as is in me to recall his error, and give satisfaction to the church, by the publique and audible pronouncing of this forme here underwritten:

“Whereas

“Whereas upon Sunday the 25th of June last, in my publique sermon upon these words, St. John, xx. 23. *Whose sinnes ye remitt they are remitted, and whose sinnes ye retaine they are retained*, I delivered this doctrine, That a speciall confession unto a priest (actually where time or opportunity presents itselfe, or otherwise in explicit intention and resolution) of all our sinnes committed after baptisme so farre forth as we doe remember is necessary unto salvation, not only necessitate, butt also necessitate medij, so that according to the ordinary or revealed means appointed by Christ there can be no salvation without the aforesaid confession: upon more mature thoughts and better information, I doe finde that this doctrine then delivered was both erroneous and dangerous, having no warrant from the word of God, and crossing the doctrine of our church, as may appeare by her liturgie in the second exhortation at the communion, and in the visitation of the sick, and in the second part of the homilie of repentance. As therefore in general I doe acknowledge in the words of the aforesaid homilie, that it is most evident and plaine that this auricular confession hath not his warrant of God's word, and that therefore, being not ledde with the conscience thereof, if we with fear and trembling, and with a true contrite heart use that kind of confession which God doth command in his word, namely, an unfeigned confession unto almighty God himselfe, then doubtless (as he is faithful and true) he will forgive us our sinnes, and make us cleane from all our wickedness; so in the case of a troubled or doubtfull conscience, I doe conforme my opinion unto the direction of mother church, which, in her liturgie, doth exhort and require those whose consciences are troubled with any weighty matter, to a special confession, so that they who cannot quiet their owne consciences are to repaire to their owne or some other discreet and learned minister of God's word, to open to him their grieve, that so they may receive such

ghostly counsell advise and comfort, as their conscience may be relieved, and by the ministry of God's word they may receive comfort, and the benefitt of absolution, to the quieting of their consciences, and the avoiding of all scruple and doubtfullness. Butt it is against true christian liberty, that any man should be bound to the numbering of his finnes, as it hath been used heretofore in the times of ignorance and blindness. This I doe acknowledge to be the doctrine of the church of England concerning confession; and to it I doe examine, subscribe, and am heartily sorry for whatt ever I have delivered to the contrary."

"And if Mr. Adams refuses to make this publique acknowledgement of his error, then my sentence is, that he shall undergoe the punishment which the university statutes, cap. 45 de concionibus, doe appoint to be inflicted; and I require the registor to make an act as well of this my sentence as of the forme of recantation enjoined by me, wherein he is charged with no other but his own words in his sermon, and appointed to recall his false doctrine in no other butt the words of the liturgie and homilie of mother church. This I require to be registred, that so it may appear that I have done my part to assert and maintaine the doctrine of our church."

Reasons of dissentient heads. Of the heads who determined in the negative, four gave as a reason, that particular confession is not contrary to the doctrine of the church of England, and one required the qualifying of some particular expressions. Thus a recantation could not be proposed to Adams, and "Mr. Vice-chancellor did dismisse the meetinge, but not the cause;" but it does not appear that the cause was ever resumed, or that Adams was farther disturbed about his opinions*.

From

* Charles Durnford and Edward Hyde East speak thus in their reports: "Some of the heads assented and others dissented to the recantation proposed.

"Finally

Reflections on the preceding case. From this case may be clearly collected, among other things, that the form of recantation was considered as a material part of the business, and that an order to recant, without specifying the particular errors in a sermon, would have been considered as an absurdity. The next case referred to by the promoter is that of Whiston, taken from a loose paper found in the registry's office, from which nothing can be collected, which does not confirm the account given in the preceding pages*.

Waller and Duckett. The above are the only precedents brought forward for the court of king's bench by the promoter, which relate to the statute de concionibus: the others were all either mere matters of discipline, or confessedly tried in the vice-chancellor's court, and the manner of proceeding was totally different. Copies are given of the summons to Waller, and proceedings of the court, by which he was banished for publishing a blasphemous libel, entitled David's Prophecy; and from these papers it

“ Finally the sentence took place, and was subscribed by the vice-chancellor and
 “ heads, which done, Mr. Vice-chancellor did dismiss the meeting, but not the
 “ cause.” These accurate reporters have unfortunately forgotten to tell their readers that the recantation was indeed signed by all the heads present, but in very different senses, six being for it, and five against it, and each person either declaring positively his assent, or giving reasons for his dissent. The reporters say positively that a sentence was signed by the vice-chancellor and heads, by which if they mean a legal sentence affecting the preacher, they have grossly mistaken the case; and if they mean any thing else, they should have explained themselves in a different manner: the fact is, that the dispute was on the nature of the recantation, and no sentence could take place until a recantation, signed by a majority of the heads, had been refused. A majority not concurring with the vice-chancellor, no recantation could be demanded, and no sentence did take place. It is to be hoped, for the credit of the law, that the reports are in general more accurate, or it is time to find other reporters; and perhaps this should properly be made part of the judge's employment.

* This paper is printed, as given by the promoter, in the Appendix.

appears, that one Brooke stood forward as an accuser, that Waller confessed the crime, and without the proposal of recantation was sentenced to be banished. The papers of Duckett's case are also copied, which prove that he was accused of atheism in the vice-chancellor's court, found guilty of the crime, and sentenced to be expelled the university.

Cases from books
described.

Of what authority the contents of the papers thus sworn to by the promoter are, he leaves to conjecture; for he says only, that they are taken from books, papers, and records in the possession of the registry of the university: the following cases he makes oath are taken from two books, the one lettered on the back, Act. Cur. 1690. 1709, the other entitled in the first page Acts of Court, 1752. The first case is that of John Latham, who confessed, that he had been in a house of ill fame, for which he was suspended from all his degrees: the second that of Rutter and Osbourn, who, on confessing the charge that they were out of college at unseasonable hours in the night, and quarrelling in the streets, were also suspended from their degrees. From the extracts it appears, that these cases were determined by the vice-chancellor on the 18th of March, but the date of the year is not put down; that they were mere cases of office, ordinary discipline, or criminal jurisdiction before the vice-chancellor, and that none of the heads were present. The next and final case is that of an undergraduate and a bachelor of arts, prosecuted by an inhabitant of the town, for a riot on the night of the 28th of June and morning of the 29th, 1780, and indecent behaviour towards his daughters. For a variety of offences proved on the young men, by several persons examined in court upon oath, the vice-chancellor on the third day of hearing inflicted the following punishments: 1st, That they should be fined 6s. 8d. each for being out of college at unseasonable hours: 2d, That one should

should be confined a fortnight, the other a week, to his college: 3d, That they should ask pardon of the promoter for the disturbance at his door, and of two of his daughters for some indecent language reflecting on them as unchaste women.

Reflections on the last cases. How these cases can serve the promoter Kipling, it is difficult to conceive.

On the first day, in the last case, there was not a head in court besides the vice-chancellor; on the second, he was joined by five heads; on the third, two only were present with him; and if none had been present, the cause would have gone on as well. Nothing is proved, except that the same course was taken by the promoter and his cabal against the authour of a pamphlet, as against some young men for a riot. But what has all this to do with the present question? when it is not denied, that the authour of Peace and Union was tried in a vice-chancellor's court. But it is affirmed, that he ought not to have been tried in such a court, and that no precedent can be alledged in favour of a trial in that court, under a statute, which implies a mode of proceeding absolutely incompatible with the laws of a criminal court.

ARGUMENTS OF THE UNIVERSITY COUNSEL,

UPON these affidavits the question was argued on several days, till its final determination on the 26th of November 1794. The counsel for the university were the attorney general, Erskine, Law, Graham, and Le Blanc, who contended, that in all cases of judicial cognisance before the vice-chancellor, whether sitting alone or with the heads of houses, the proceedings are in the vice-chancellor's court, of which he is the sole judge, though

in certain cases he cannot pronounce judgement without the assent of a majority of the heads : that the place of holding the court is at his own option, and, whether he takes cognisance of an offence in camera, or in the consistory, or law schools, it is still the vice-chancellor's court. The proceedings in this case were strictly conformable to the rules of the vice-chancellor's court ; a court which had existed immemorially, and taken cognisance of all offences against discipline, as well as other matters, and there is no other court of the kind in the university. This court is held in the vice-chancellor's name, is called his court ; by him the process is issued, the court is convened, adjourned, dismissed, and the sentence is given by him, and in his own name and authority. Since such a court existed long before the granting of the statute in question, the new offence created by this statute generally must be referred to this court ; for it could not be supposed, that the vice-chancellor should take cognisance of this particular offence in his private capacity*, when there were certain rules laid down for the proceedings in his court in all other matters of discipline, where he could enforce the attendance of witnesses, take their evidence upon oath, and enforce the execution of sentence.

Statutes compared. By the statute on the authority of the vice-chancellor, 1 *Eliz.*, jurisdiction is given to the vice-chancellor in certain offences, without reference to his court, and yet this jurisdiction has always been exercised

* The reason is obvious. To be brought into a criminal court is in itself ignominious. A man might offend this statute without positive guilt ; he might have lapsed through an error of the head, it would have been said in former times, not of the heart ; he was not therefore to be put on a par with common criminals ; he was to be won from his errors, and the proper place of doing this is evidently a private room ; and with this clue we see the propriety of all former proceedings, in which every thing was done in conversation, without the forms of a court.

in that court, though the consent of the heads to the sentence of the vice-chancellor is in order to punishment by this statute required. The statute in the 12 *Eliz.* describes the offences in a similar manner, leaving the chastisement of them, however, to the judgement of the vice-chancellor, except in all cases of banishment, and certain cases of imprisonment, in which the consent of the majority of the heads is requisite. In these cases the vice-chancellor is still the sole judge, the sentence is his, and the heads are only assessors. Now, if it is contended that an offence against the statute de concionibus is not to be tried in the vice chancellor's court, because punishment cannot follow without the consent of the heads; upon the same principle none of the other offences could be tried in the vice-chancellor's court according to the power given by stat. 1 and 12 *Eliz.*, which require the consent of the majority of the heads to the sentence: but with respect to these offences, it does not appear that they were tried in any other place than the vice-chancellor's court, or that the calling in of the heads altered the nature of the court: the statute, therefore, which required the consent of the heads to banishment in this peculiar instance, could not create any more than the other statutes a new species of jurisdiction. The assent indeed of the heads was necessary to the recantation proposed, which, however, is to be offered jussu cancellarii, and the party is banished eadem auctoritate.

Style of the court. Of the cases mentioned in the affidavits some were clearly in the vice-chancellor's court, others related to offences under the statute in question. By comparing them together, it appears from the similarity of stile in the courts, original process, subsequent proceedings, whether in camerâ or consistorio, and the form of sentence, that they must all have been tried in the vice-chancellor's court. In some cases under the statute de concionibus,

concionibus, when banishment was inflicted, some of the proceedings were at times before the vice-chancellor alone, at other times before less than a majority of the heads, without which, however, no sentence appears to have been passed. Besides these arguments drawn from the nature of the court, much reliance might undoubtedly be placed on the affidavits of two persons of long standing in the university, who never heard of any court in the university distinct from the vice-chancellor's court.

Recantation. With respect to the imperfection in the form of recantation, since no form is laid down, the mode of recanting must remain entirely in the breast of the vice-chancellor and his assessors; and since the fact had been proved*, that an offence had been committed against the statute, a form more lenient could not possibly have been devised. It cannot also be argued †, that the specific errors were not pointed out, since they appear in the record of the proceedings on which both judgement and recantation are grounded. But allowing this to have been a sufficient cause of complaint, the delegates of the university, not the court of king's bench, were the proper judges.

Imperfection of sentence. The complaint on the illegality of the sentence, because it is not exactly worded according to the statute, is ill founded; for, as the college is situated within the university, an actual exclusion of a person

* The facts said to be proved by the court were, that W. Frend was the authour and publisher of the pamphlet, and that, by writing and publishing it, he had offended against the latter part of the statute; but the court never said what was the offence committed by writing and publishing the book in question, whether it lay in the offences alledged in the articles, or in other parts of the book.

† It may certainly be argued, till the court declares what articles in the charges it approves or disapproves of,

from

from the precincts of the university is an exclusion from his college; and this reasoning is confirmed by the affidavit on the part of the complainer, who states, that he cannot enjoy the benefit of commons, and other privileges, unless he is permitted to reside in the university. The legal construction of the words of the statute exclude him also from the college, for the effect of the sentence is to be compulsory on the college to follow it up by an order of exclusion from the college, "Let him be excluded from the college." The university is required to banish the offender from the university, and the college from its own body; for some privileges of the college may be enjoyed by an absent fellow, and of these he cannot be deprived without an order from the college. But if there had been an error in the form of the sentence, this is not the place for relief, the point can be settled only in the court of delegates.

New view of the case. These grounds of complaint appear therefore to be ill founded, and the granting of a mandamus must be resisted from another view of the case. Mr. Frend is still a master of arts: he is not deprived of any known franchise, but is solely put out of a condition to avail himself of some of the advantages of his franchise; and a mandamus cannot be granted, except where the corporate franchise itself is either taken away or suspended. Had he been imprisoned or transported by the sentence of any other criminal court, he could not have tried the legality of such a sentence, by application for mandamus, though the same advantages would have been lost in that as in the present case.

ARGUMENTS IN SUPPORT OF THE RULE.

IN support of the rule the counsel on the other side observed, that the last remark could have no weight, for a mandamus was the true remedy, when the subject had no other specifick mode of redress. Since the franchise could not be executed beneficially, the sentence of the vice-chancellor operated as a disfranchisement, and this court, having a controul over all inferiour jurisdictions, was properly applied to for redress. The injustice also in the first instance need not very clearly appear; if there is ground only for doubt in the court, a mandamus must be granted: for, should it be refused, the party has no remedy; if granted, the persons to whom it is directed, may dispute the question on a return to the writ.

Nature of the
vice-chancellor's
court.

With respect to the question of jurisdiction, it is best elucidated by considering the nature and constitution of the vice-chancellor's court, and then examining the description of persons authorised to take cognisance of offences against the statute de concionibus. The origin of the vice-chancellor's court is involved in considerable obscurity, yet some certain information may be collected concerning it, inasmuch as it is recognised by the several charters granted from time to time to the university, and particularly by that of 3 Eliz. which recites the others granted by her ancestors, and is itself confirmed by the incorporating act of parliament passed in the 13th year of her reign. From these sources we collect, that it is a court of law, in which the chancellor presides as judge, or the vice-chancellor, who is to this purpose clothed with the same power and authority as the chancellor himself. It is a court of law to all intents and purposes, opened

with all the solemnities, and conducted with all the formalities, which usually belong to other courts of justice; and instituted, as Lord Mansfield seems to allow in Dr. Ewen's case, when he refers to the charter recognising its authority, for the purpose of taking cognisance of common law crimes. That it was instituted for this purpose alone, and not with a view to embrace offences purely statutable, i. e. such as would not be cognisable in other courts of law, appears as well from the circumstance of no such right being granted in any of the charters, as from considering the reason and design of these charters. The manifest design of these charters was to establish a forum domesticum, armed with a power of hearing and determining such cases as were cognisable in other courts, but in a particular manner and form, and of punishing *secundum leges et consuetudines suas*, i. e. by suspension or deprivation of degrees, *vel secundum statuta regni jam edita seu in posterum edenda*. It was erected for the convenience of the members of the university, to which they might resort in all cases in which they were parties, and to prevent the vexation and expence of being dragged into distant courts, to whose jurisdiction they would otherwise have been subject. But they could never be considered as subject to other courts, in cases of offence against their own private statutes only. Such offences every society has the power of hearing and determining within itself. The court of the university therefore, it should seem, was meant to be invested with a right only to take cognisance of those offences, which would be otherwise cognisable by some other publick court, civil or ecclesiastical.

Jurisdiction of
vice-chancellor and
heads.

Now the jurisdiction under which offences against the statute de concionibus are to be corrected, appears to be in its nature and constitution a totally distinct tribunal: for the words

words of the statute expressly declare, that whatever the vice-chancellor commands to be done, must previously be sanctioned by the concurrence of a majority of the heads. The heads therefore are clearly made an inherent and necessary part of the jurisdiction, which is to take cognisance of offences against the statute: and that no doubt may remain, it is afterwards in terms enacted, that upon a refusal of recantation, the offender shall incur the penalties of the statute, *eâdem* authoritate, which must mean that which went before, because it refers to it, namely, the authority of the vice-chancellor and the major part of the heads of colleges, in whom lay the power of offering the terms of recantation. Now the heads form no part of the vice-chancellor's court, and they are a most essential ingredient in the constitution of the jurisdiction described by the statute; and it is an indisputable principle of law, that a court, which subsists by charter, cannot be either enlarged or abridged in its powers by the operation of a bye-law. Thus, if the university had been so inclined, they could not with any success have invaded the chartered rights of the vice-chancellor's court; and it appears from the cases that they never until now attempted to usurp such an authority. Suppose the case of a court leet in a corporation, where by charter the mayor presides as judge: an act of parliament is afterwards passed, which commands the mayor and aldermen of this same corporation, to take cognisance of certain offences enumerated in the act; can it be pretended, that the mayor in his court leet can exercise jurisdiction over offences directed to be tried before another tribunal?

Affidavits of
Colman and Far-
mer.

The affidavits of Colman and Farmer can have no weight with any one, who reads the statutes of the university: for in the 30th and 38th chapters a jurisdiction is pointed out of a similar nature with that under the statute *de concionibus*,

concionibus, which was never exercised nor conceived to be exercised in the vice-chancellor's court. Under the former of these statutes, the regents are bound to elect those persons, who are nominated to be proctors, unless a sufficient ground be alledged against them before the vice-chancellor, and be approved of by him and the major part of the heads. But it was never conceived that this complaint should be made or would be heard in the vice-chancellor's court, where the attendance of the heads was accidental. Under the 38th chapter, the mode of depriving a bedell of his office is pointed out. The chancellor in that case is to do it with the consent of the major part of a meeting, consisting of the proctors and the heads of houses; but no one ever supposed, that a bedell or person nominated to be proctor, could be subjected under these statutes to a formal trial in the vice-chancellor's court, or that the proctors could make a part of that court.

The promoter's
affidavit.

Much might be said on Dr. Kipling's affidavit; for in pointing out two statutes made in different periods of the reign of Elizabeth, he seems to intimate, that they are of equal authority: whereas the slightest comparison of them shews clearly, that the former statute was abrogated by the latter.—They run exactly in the same words to the latter part of the second statute, where a restriction is made with respect to the mode of punishing: some punishments being left to the discretion of the vice-chancellor, but others cannot take place without the consent of the major part of the heads; whereas, by the former statute, none of these offences could be punished but with the consent of the heads. Besides, Kipling himself ascertains this point by some of the cases, which he has brought forward: for in them the vice-chancellor suspends from degrees by his own authority, without any interference of the heads, which he could not do, if the first statute were in force; and

and it is plain, both from the words themselves, and the uniform practice of the university, that the first statute was repealed by the second. Besides, if either of these statutes contain any thing inconsistent with the charter, such part cannot be considered as in force, because the incorporating act of the 13th Eliz. confirms the charter; and therefore every thing contained in any of the statutes, which militates against the power given to the chancellor by the charter, is by this incorporating act of parliament virtually repealed.

Precedents considered. The manner of proceeding in Rush and Adams's cases, evidently point out transactions of a private nature, not conducted in an open and publick court. Kipling does not swear, that they are taken from any books entitled *Acta Curiae*, which he would doubtless gladly have done, if it had been in his power, since he points out that distinction in other cases. It does not appear, that Rush was cited by the vice-chancellor alone; and a decree of the vice-chancellor and heads is mentioned as the ground for summoning Adams. There is no appearance of crier, witnesses, or any other persons, but the vice-chancellor, heads and registry; and in Adams's case, where no sentence was passed, it is not stated, that the court broke up, but the meeting was dismissed. The same appears equally clear from the last case cited that has any relation to the statute de concionibus. Whiston was summoned several times, and twice on a Sunday*. Now a citation into the vice-chancellor's court supercedes the necessity of repeating the summons; and Mr. Frend received only one citation. Whiston could not carry

* The probable reason of this is, that as the vice-chancellor and heads meet together on Sundays in the vestry, before they go into the church, they then determined the time of meeting on Whiston's business; and the bedell, who attended the vice-chancellor home, went from him with his summons to Whiston.

his friend with him into the meeting; and the sentence required the attestation of a notary publick. From the instances therefore cited by the promoter, and from the most authentick histories of the university, it appears, that many have been punished for offences against the statute de concionibus, by a meeting of the vice-chancellor and heads; but not a single instance can be produced, where it is clear, that such offences have been tried in the vice-chancellor's court: on the other hand, many have been punished, and instances are allowed on both sides, of punishments in the vice-chancellor's courts, for the publication of objectionable sentiments, blasphemy, &c. but under other statutes, not under the statute de concionibus. Exclusive also of the forms and extent of powers respectively belonging to the two jurisdictions, and their different nature and constitution, their object is quite distinct, that of the vice-chancellor's court being punishment, and that of the jurisdiction under the statute de concionibus, revocation of error.

A printed book
not within the
statute.

The publication of a book is not an offence against the statute de concionibus, which is confined solely to academical exercises. Publications belonged to another jurisdiction, when this statute was given; for these a licenser was appointed by the state; and it is not probable, that the jealousy of Elizabeth would permit the heads to interfere with his office; and it does not appear, that in her reign, among the various publications deemed excessively offensive, of members of the university, one of them was brought before the cognisance of the heads. All the instances indeed produced on both sides, refer to sermons or academical exercises; and, if in Whiston's case a book was mentioned, it seems to have been intended only as a collateral proof of his opinions; for the enquiry was not pursued, whether he was the authour of it or not; the

heads had no evidence of the fact; and they proceed by the depositions made on oath of the opinions maintained in his sermons. Besides, they who drew up the articles of accusation in the case at present before the court were clearly of opinion, that a pamphlet did not come within the words of the statute, for they did not pursue the words of the statute, but those of an exploded grace*.

Recantation. The want of specifick errors being pointed out in the proposed recantation, is a ground of complaint not to be surmounted. In all the cases produced, certain specifick errors have been pointed out to the offending party; and, if Adams's case afforded so much ground of debate to the heads, it is not to be supposed, that they could have been brought to approve a recantation conveying such a general and sweeping charge as that in the late proceedings. What was the effect too of this recantation? Was it not for the authour to retract and condemn every sentence in his book †, for who was to determine what were the points which the vice-

* At the conclusion of the articles delivered in the vice-chancellor's court, are these words: "Wherefore the party promovent in this cause, prayeth right and justice to be done, and administered to him effectually, and that the said W. Frend, in regard of his great rashness and presumption in the premises, may be truly corrected and punished, as the law requires." Now the law does not require correction or punishment for any offence, however atrocious it may be against it, by the propagation of opinions deemed erroneous; punishment does not follow the delivery of opinions, but pertinacity in maintaining them with refusal to recant.

† There were nine articles of accusation, in the second of which the pamphlet is called scandalous; and a copy of it having been delivered into court with the articles, it is "prayed to be admitted as if inserted therein."—By the mode of recantation proposed, every sentence in the book might be deemed erroneous, for the publishing of it was called an offence against the statute, and no line of demarcation is drawn between the innocent and offensive passages.

chancellor and heads did, and what they did not condemn? The bishops in a former reign had a better insight into these matters; for they justly reprobated the proceedings of the lower house of convocation, in censuring a work of bishop Burnet; for they came to this resolution, "That the lower house of convocation's censuring the book of the bishop of Sarum, in general terms, without mentioning the particular passages on which the censure is grounded, is defamatory and scandalous."

Informality of
the sentence.

The last ground of complaint is the informality of the sentence, which cannot be got over by saying, that it is virtually the same as that prescribed by the statute; since in all criminal cases the direction of a penal statute must be implicitly obeyed.—The judge has no discretion, except such as is allowed by the express words of the statute, and here there is no discretion entrusted to him. The common familiar instance of an offence punishable, under an act of parliament by fine and imprisonment, proves this: the judge must inflict both, even if the fine imposed were nominal; because it is perfectly well known, that, unless he obeys the direction of the statute, the judgement is bad, and must be set aside by writ of error.

Upon the whole, if the court should entertain a doubt upon any of the points submitted to it, by granting the mandamus, the question may, unless the university should from the past discussion be convinced of the error of its heads, be more fully investigated.

DECISION OF THE JUDGES.

THE judges now separately gave their opinions, in which they were unanimous on three points, but one differed from the rest on the doctrine maintained with respect to the punishment assigned, which ought to be exactly that which the law directs. But this was immaterial, he said, in the present instance, as exclusion from college is included in the sentence of banishment; and if not, it is a ground of appeal only to be decided by the court of delegates. That the court of king's bench had power of correcting the errors of inferior jurisdictions, the chief justice asserted, must be allowed as a proper general rule; but it must be taken *cum grano salis*, for it was intimated in Bentley's case, "that if the bishop of Ely had acted as general visiter, this court would not have entered into a discussion of the case below*." That there should also be an appellat jurisdiction to reform the errors in the judgement of the first court, was stated in the same case to be essential to the good administration of justice; but in this case the jurisdiction of the first court seems to have been allowed, for the party applying for a mandamus seems to have admitted it, by appealing

* Mr. Reeve, counsel for Dr. Bentley, admitted, that, if the university had returned to the writ, that the king was their visiter, there would have been an end of the dispute in the king's bench, i. e. the king's bench could not, after such a return, have taken further cognisance of the matter in dispute. Not a word is said about the bishop of Ely, nor indeed was any one ever so childish, who had the least knowledge of the university, as to assert that of late years the bishop had any visitatorial power over the university at large, whatever authority he may possess as visiter of certain colleges; and after all, lord Kenyon perhaps did not say the bishop of Ely, but the king; and the error in this statement is then owing to Messrs. Durnford and East, who have given the remark as above in their reports.

from it to the senate of the university; and, if there had been, as was hinted, any error in the appointment of delegates, the application should not have been for a mandamus to restore, but for a mandamus to rectify the appointment of the court of delegates.

Jurisdiction of the vice-chancellor's court. With respect to the great questions it may be observed first, that, as to the power of the vice-chancellor's court to take cognisance of the offence stated to have been committed, all the precedents, which can be found in the university books for near two centuries past, are in support of the jurisdiction of this court; for the differences between these cases and the present go besides the jurisdiction of the court. The court in these instances was constituted as in the present, and no other court has been pointed out as a substitute for it; for, if it is said that such a court should be composed of the vice-chancellor and heads, those very persons sat in the present question, and from them an appeal was made to the court of delegates*. If there had been an error in the proceedings of that court, it was to be rectified in the court of delegates, not in this place.

A printed book within the statute. As to the offence, it cannot be supposed that the university should have existed so long without the power of checking evils, which would be subversive of all its discipline. The words of the statute in question, however, decide this point. A pamphlet has been published in the university by a member of the university, a flagitious libel, containing matter highly offensive to those, who think the re-

* The appeal was made from the sentence of a vice-chancellor acting in his court, and there was no other way of proceeding: such is the effect of law in this country, that if certain forms are not followed, it is in vain to sue for justice, and, if they are followed, the uncertainty of the law is proverbial.

ligious establishment of this country of importance. "This gentleman too was a fellow of a college and a master of arts; but I hope, for his own sake, that he is not in holy orders, because I do not see how any person, who had before in the most solemn manner expressed his assent to every thing contained in the liturgy, could have ventured to write the pamphlet in question. It would have been for him to reconcile it to his own moral and religious character; therefore I take it for granted, that he is not in holy orders, and indeed he stiles himself gentleman only in his affidavit*." His offence is within the statute. To promulgate dangerous doctrines by publication is at least as criminal as verbally to declare such doctrines; "for that which is uttered by the mouth may soon be forgotten, but *litera scripta manet*." Indeed they, to whom the education of youth is committed, would have been highly culpable, if they had suffered a publication like the present to pass *sub silentio*, without

* What had lord Kenyon to do with these points? He was sitting as judge on a different question, not on the merits of the pamphlet, and in the course of the pleadings had himself prevented the counsel from entering upon an examination of some passages in the book. But, to assist his lordship's fight, he may be asked whether he now holds all the opinions he did at twenty years of age, and how many he would publicly maintain, if the system of things were changed in this country. The fact is; Mr. Frend did in a publick manner disannull his former subscription to religious opinions, because he had changed his mind on those subjects; and untill it shall be proved, that it is in the power of a man of four and twenty to ascertain, that a greater degree of knowledge and more extensive enquiry shall not alter his judgement on between two and three hundred disputable propositions; no one can be charged with inconsistency for declaring the change of his sentiments, nor will any man, who has reflected in the least on what passes within himself, be at all surpris'd at such a change. If a man retained his former opinion on the liturgy, and then wrote against it, there would be a difficulty in reconciling such conduct with a moral and religious character. What had lord Kenyon also to do with holy orders, when he saw by the affidavit, that Mr. Frend is a gentleman, not a clergyman? but this is only one out of many instances of the inconsistency of our courts of law.

any endeavour, by the proper jurisdiction, to reform or punish the authour.

Recantation. With the form of recantation we have nothing to do, as it rests entirely with the courts of the university, which are guided by the principles of the civil law; but, if our assistance had indeed been required, it does not seem that we could have framed any thing more lenient than the recantation proposed.

Informality of the sentence. The sentence has been objected to, because it is not so severe as it should have been; one only of the things required by the statute has been done, and the other has not been inflicted: but the language of these statutes is borrowed from that of the civil law, and the court of the university, which proceeds on the principles of the civil law, has put its construction upon it, and we are not authorised to reverse its judgement. In Dr. Bentley's case this court interfered, because he had been condemned without a hearing, and every principle of law had been violated. But this case is very different, and there is neither precedent nor principle to warrant a mandamus in a question, which, for the sake of the publick and the university, ought to be at rest.

Confirmation by the three other judges. The rest of the judges followed their leader nearly over the same ground; one observed, that the publishing of a book must come within the statute, for it says in *lectionibus publicis seu aliter infra universitatem*, and the words are large enough to include this case, for which they were certainly intended, as the publishing of such a tract was within the mischief to be guarded against, and it would be exceedingly wrong to narrow the construction of the statute*. The recantation

* This is just as wise a remark as that of his brother Grose, who construed *locus communis*, the term for an exercise as well known as the english term

recantation has not the smallest ambiguity, for the articles point out the exceptionable passages; and to them alone the recantation refers. Another justice observed, that if this offence had been punished by a private meeting of the heads, a complaint would have been made, that the statute pointed to the vice-chancellor's court, that the privilege of being heard publicly in that court had been taken away, that banishment had been pronounced in a court new, unheard of, and self-created, while there were extant on the records of the vice-chancellor's court proceedings on this very statute*. Against such a substantial ground of complaint no answer could have been given. The last justice observed, that Rush must have been tried in a vice-chancellor's court, not in camera, for the account of the proceedings begins with the stile † of a court "*officium domini*;" and besides he was for a contempt of court committed into custody, which could not have been done in camera; and, though it has been said that no promoter appeared in that case, perhaps the minutes of it are not sufficient to shew that, but in the subsequent cases of Waller and Duckett that circumstance does appear‡. There was not
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common place book, to be the place in which an exercise was performed. *Aliter publicè* refers to similar exercises as those before mentioned; the statute is on preachings, and the publishing of books belonged to the licenser.

* Where are these proceedings? The university affidavit does not point out, that the cases under the statute were on the records of the vice-chancellor's court. Kipling swears only, that he has taken them from several books, papers, and records, kept by the registry of the university, who has many thousand papers in his keeping, not relating to any court of law.

† Why not? A justice of peace can commit a person in the streets for some offences; but the culprit will not on that account be said to have been committed in the court of king's bench.

‡ This is a most curious argument. In Rush's case it is doubted whether he appeared in the vice-chancellor's court, because there was not a promoter; and the learned justice tells us, that in the subsequent cases, which all parties
allow

any difficulty also in the recantation, which must refer to the things specified in the articles, and not to any thing else. Thus the rule was dismissed; and it is now time to call the reader's attention to the great question of the progress of religious liberty and free enquiry, against which the statute in question seems to have been formed, and of which, from the nature of their office, the heads of colleges seem to have ever been very incompetent judges.

GENERAL REFLECTIONS.

IT appears then first, that, in the reign of queen Elizabeth, though more tolerant than that of her predecessors, the freedom of sentiment, on which the secession from the church of Rome, called protestantism, is supposed to be founded, was far from being universally allowed. The princess had suffered from the bigotry of her sister, but in common with the hereticks of her days, she had not imbibed the benevolent principles of the christian religion. Her conduct towards the catholicks and other dissentients was marked with oppression: the fires were seldom lighted up in Smithfield, but the prisons echoed with the groans of persons of all ages and both sexes, confined not for crimes against the welfare of society, but for supposed error in doctrine; death was not very often their punishment, but ecclesiastical tyranny in most other shapes inflicted its stripes without mercy. The apostasy of the nation from the church of Rome had introduced

allow to have been tried in the vice-chancellor's court, there was a promoter. Is there not a striking difference between the cases? and is it not extraordinary, that in the number of cases under the statute de concionibus no promoter should appear? How could the justices and the counsel venture to say, that the precedents alledged were similar, when, not only in this, but in so many other instances, there is such a manifest difference?

a ferment in the publick mind; and it was natural, that when men were taught to disregard the authority of a see reputed holy for many ages by their ancestors, and were encouraged to examine those scriptures, from the perusal of which they and their ancestors had been debarred, it was natural that a diversity of opinion should prevail, and that they should enquire by what means a woman could become the head of the church, and her self-created bishops receive the gifts of the spirit. Disputes were consequently very warm on the subject of church discipline, and in them were at times involved questions, attacking doctrines supposed the most important of religion. The university of Cambridge was by no means an idle spectator; the rites and ceremonies of which Elizabeth was a great admirer, were not admitted without strenuous opposition, and her rules on ecclesiastical government were discussed with a freedom which shook the fabrick of her new erected church to its very basis. Either freedom of discussion was to be destroyed, or episcopacy must fall. The latter did not suit the purposes of a haughty monarch, who foresaw that it would be easy to dictate to a set of fawning priests, dependant upon her nod, but dangerous to permit an unlimited liberty of teaching among independant assemblies.

Church policy. Let tyranny determine, and pretexts are easily found. To attack with success, it was said, the errors of the church of Rome, uniformity of opinion should prevail among its opponents; and this uniformity could never be obtained, if the rashness and petulance of youth would not give way to the decisions of age and experience. If new opinions are to be thrown out at random, and without censure from the pulpit of the university, the minds of the younger part of the audience will be first infected, and through them heresy and schism will make their way over the whole kingdom. Let then the teachers
be

be attended to; let their errours be pointed out to them by older and better heads; let them be reasoned with; let them not be treated with the severity of publick courts of law, but let them be examined in private; and, having there been convicted of error by wise and learned men, let them remove the stigma brought on their profession, and extricate their hearers from this labyrinth of error by an open and candid recantation. What could be more moderate! What more likely to conciliate all men to the mildness of this new mode of governing in ecclesiastical affairs! Who more proper, from their age, their education, their wisdom, their station, to examine and decide upon such matters, than the heads of colleges!

Natural effects of it. On this principle the statute de cacionibus or sermons was framed; and its good effects in the university answered very soon the purpose of the legislator. The proceedings were short. The preacher, who had advanced sentiments deemed erroneous, was called before a meeting of the chancellor and heads of colleges; they pointed out to him these errours, they reasoned with him, and sometimes with success; at other times they inflicted the penalty of the statute, they banished the offender from the university: peace was soon restored, disputes were seldom heard, the papists laughed at the pretensions of the hereticks to freedom, and the heads of colleges smiled in their turn, when sitting on the cushion in a cathedral, and decorated with the protestant ornaments of episcopal dignity. A few members of the university exclaimed against this and other infringements of their rights: it was indeed a daring innovation; but the opposers of it, being termed daring and seditious innovaters, were crushed by the arm of power. The natural consequences of this institution might, without reference to history, be easily conjectured by events in our own times. Many remember the language held by the heads of colleges,

leges, when Mr. Pitt was first a candidate for a seat in parliament. It was not to be endured, that an upstart youth should come forward, unsupported by power or connections, to represent the university: two short years changed their expressions, and the wealth of the treasury supplied every other defect. No one can detract from the merits of the minister, for these obsequious servants have not been ill paid by a bishoprick, three deaneries, and various other valuable preferments. Thus connected with the minister, the conduct of the heads in any transaction may be easily divined, and implicit obedience is in general to be expected from them in the same degree as from a bench of bishops.

In different reigns. Hence the reason is evident of the number of prosecutions in the reign of Elizabeth, and the paucity of them under her successors. Hope and fear are the great incitements to action, and present reward or punishment must with the majority produce the greatest effects. The way to preferment, it was soon seen, was by a compliance with the ruling powers, the certainty of punishment was clear from the examples made of their authority by the heads. In the reign of James the first there were few instances, because, as the monarch concerned himself less with these subjects, the heads were less likely to be gainers by their officiousness, and the university had not recovered from the torpor into which it had been thrown by the severity of the preceding reign. The turbulent times that succeeded made the heads fearful of acting, and they had little encouragement to expect reward for a religious warfare, under the carelessness of the second Charles, the popish bigotry of the second James, the tolerant principles of the third William, or the inactivity of his successor.

A solitary example was shewn to the world in the last mentioned reign, and a man of letters and moral probity was, for the singularity of some opinions, banished from the university, to make way for a profligate and a contemner of all religion. Yet Whiston would not probably have been called before the heads, if an alarm in the state had not given rise to expectation of preferment in his persecutors; and if the cry of the danger of the church had not been previously used in the same manner, as within these few years, to burn down religious meetings, and plunder private citizens of their property.

Under the Brunswick
family.

During the reigns of George the first and his son, and the greater part of the present reign, the statute lay dormant; for the two former kings were not, from their birth and education, remarkably attached to the established church; and it was both their wish and the fashion of the times to encourage, as much as possible, liberality of sentiment among the various professors of religion. A departure from these principles in the present reign may be easily accounted for: the monarch was brought up in the trammels of the established church, the opposers of his family were become its most strenuous supporters, a system of corruption had undermined every principle of honour, and the increase of learning and information had produced a great deviation from the articles of religion imposed on the nation in the reign of Elizabeth. The freedom of opinion, which had manifested itself in various publications and frequent discourses before the university, had been tolerated, indeed, but they were viewed with a jealous eye by the hierarchy; and it had been resolved to take the first opportunity of stopping the progress of doctrines which threatened the total subversion of the episcopal establishment. The alarm excited in the nation by pretended plots and conspiracies, was a sufficient foundation for an attack upon an individual,

dual, rendered odious to the enthusiast, by his open avowal of sentiments, leading, according to the english church, to eternal damnation, and still more odious to the intriguing priest, for his contempt of the discipline of that church, and the means by which he saw its hirelings cringing into the higher preferments. It was expected, that by overwhelming him with the epithets of jacobin, republican, and leveller, they would gain an easy victory, and, by thus stepping forward in support of the alarm, receive in due time, from the ruling powers, the rewards of their exertions. The church, it was said, was in danger, and the twenty-seven, with the vice-chancellor and heads of colleges, combining together, without regard to the separate characters of judge, accusers, and jury, laid claim, according to their different degrees of merit, to the favours of their heaven-born minister.

Use of obsolete statutes. When abuses prevail in a system in many respects capable of rendering service to the publick, it is the duty of an individual both to point them out, and, if able, to shew the means of removing them. The power given to the heads of colleges by Elizabeth is injurious to the university, and to the cause of literature and religion. They have been, and always must be, prejudiced men. The majority of them are priests; and not being tied down, like a jury, by the sanctity of an oath, being influenced by hopes of preferment, and implicated in the system, which the promulgator of a suspected doctrine is supposed to attack, they can hardly give an impartial decision on any question relating to the doctrine and discipline of their church. By such men obsolete statutes will be revived, when it suits their purpose; and they forget, that, if the state should institute a rigorous enquiry into their conduct, according to their statutes not a man of them could hold his place. If a private member of the university is to be banished on a statute passed in the reign
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of Elizabeth, let these men be tried on other points of the same statutes*. If an obsolete statute is to be revived against him, let the statutes be with equal rigour enforced against themselves. A change of language would soon take place, the injustice would soon be expiated on of acting by statutes formed in antient times, upon manners totally dissonant with the present, and with which it would be ridiculous to comply: and indeed nothing can be more absurd than to make the laws passed two centuries ago the rule of conduct for the present generation. Let the heads then be reduced to their proper rank, let them have authority in their own colleges, according to their respective statutes; but in the university let them appear as other members, and be entrusted with rank and authority only in proportion to the merit, which they shall appear to have in the eyes of the senate. That such a regulation is necessary will appear evident to every one who considers their usurpations; for they have had the insolence to talk of their pretended decrees†, and to suppose them of equal weight with the publick laws of the place.

Queries to the
university.

It has been hinted, that the heads of colleges would suffer materially, if the state should institute an enquiry into the observance of

* An oath is taken by the members of the university to obey its statutes. A quarto volume of these statutes is printed by publick authority. It is a far-rago from all quarters: but there is no mode of determining what are to be in force, and what not. One says that certain exercises shall be performed, and certain terms kept for the taking of degrees. These exercises are seldom performed, and these terms scarce ever kept; but the degrees are given, and it is even said in the act for granting them, that the statute has not been observed. Such is the solemnity of an oath.

† These are printed in the book of statutes, which indeed allow the heads the privilege of interpreting an obscurity in any statute, but do not give them the power of meeting to make decrees. These pretended decrees ought therefore to be blotted out of the records of the university, and every future decree made by them should be considered as the act of a faction.

these statutes, to which they have sworn obedience.— But a good man does not wish to see punishment inflicted; and to devise for the future well being of society, is better than revenge on a retrospect of the past misconduct of individuals. The state would do well to interfere; for the university is a publick body, and the publick has a right to expect from the immense expenditure in it, that so noble an institution should not be prostituted to the purposes of intrigue and faction. Yet what can be said of later times? What proofs have been given of its attention to literature? What works have been produced worthy of such a body? What are the studies in which it is engaged? What is the morality of its members? Is learning the path to honour or emolument, or can indolence glide into the highest posts? Is every language, art, or science encouraged, or are the rulers content with preparing a few men for their first degree, and giving themselves to listlessness and sloth for the remainder of their lives? Much may still be done in the place, when monastick institutions are destroyed: and, if the state should interfere, as it is to be hoped it shortly will, instead of too rigidly enquiring into former transactions, would it not be best to attend chiefly to the younger part of the university, and to excite it to industry, by institutions better adapted to the genius of the times? If the senate were called upon to new model its statutes, and to lay down a plan of study, there cannot be a doubt of their preference to the antient code; and instead of the prostitution of an oath, which is now so shamefully administered by the pretended guardians of religion, the chearful obedience of every one would be founded on laws dictated by good sense, and the publick advantage.

Decision of the
king's bench.

But to return from this digression: If the decision of the vice-chancellor and the court of delegates were not founded upon justice,

how came it to receive the sanction of Westminster-hall? An alarm had been spread throughout the nation, and the courts of law, whatever may be their conduct in private actions, in affairs at all connected with the state have been in general found to receive their clue from the higher powers. The chief justice was unguarded enough to shew this, when the natural impetuosity of his temper broke forth, and giving rein to his passions he forgot himself so far as to call the pamphlet, which has given rise to this discussion, a flagitious libel. If his words had been true (and the contrary opinion of impartial men, eminent both in the civil and the common law, justifies the assertion, that he was either mistaken, or that the definition of a libel is difficult [to common sense and common honesty]), still his language disgraced the seat of justice. He was not then sitting upon the merits of the book, but the conduct of the vice-chancellor's court. He was not supposed to have read the book; and it was cowardly in him to assault, when every weapon of defence was removed: it was injustice in him to become an accuser in the place, where he sat as a judge.—Let the petulant and fiery justice, however, use his own terms; let it be in his estimation a flagitious libel, since it exposes too many flagitious acts, perpetrated without remorse in these kingdoms; since it exposes, but not sufficiently, the follies and jargon prevalent in the courts of law; since it holds up to derision that system, by which this learned judge attained to his present situation; since, instead of the specimens of balderdash latin and vulgar english spouted from the bench, which afford continual amusement to the younger students of the law, it calls out “for elegance of language, propriety of expression, convincing eloquence, happy allusions, and, to sum up the whole in a few words,” it expected in the higher departments of the law, “to find both at the bar and the

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table the gentleman and the scholar."* But was it becoming in the judge to call the book a flagitious libel? Did he not know to what a persecution the authour might in consequence of this expression have been exposed?—Doomed to hear it once mangled by a professor in the university, might not his ears have been tortured by the vile declamation of an attorney general? What probability of favour had he from the court, if this attorney should in consequence of the judge's expressions think fit to arraign him? The judge had already determined the book to be a libel; but between him and the authour is an english jury, and twelve honest and independent men are not, as we have seen, to be daunted by the long-winded harangues of a court lawyer.

Trial by jury. The safety of englishmen depends on a jury; and the more this institution is considered, the more worthy will it be found of admiration. The lawyers may surprize it into improper decisions, but it is the best check that can be devised against lawyers: and as long as the system of deception, arising from the language of the law and the practice of too many of its professors, is permitted to maintain its ground, the full effect of juries cannot be perceived. Much praise is bestowed on the constitution of this country; but the best part of it is the trial by jury. The house of commons was designed for important purposes, but compared with juries it is a novel institution; and it would be well, if the rights of juries had never been infringed on by this part of the oligarchy of the kingdom. A house of commons may be rendered an instrument of the greatest tyranny and oppression; it may vote large sums of money, to be divided in detail among its own members; it may propose laws detrimental to the people at large, and useful only to the oligarchy; and

* See Peace and Union, p. 32, 33, 2d ed.

against such tyranny the people may find it difficult to gain redress. But though future laws made in this kingdom should favour only the oligarchy, still, whilst the people retain the trial by jury, the profligacy of its oppressors would be checked. The people may be deceived by fictitious alarms, their decisions may not for a time be consistent with their own welfare; yet the deception, as has been already seen, is short-lived, and the lives of men will not be wantonly trifled with at the caprice of a time-serving minister. Let englishmen then cherish the idea, that liberty depends on the preservation of this institution of their saxon ancestors, and that, if the commons' house, as it is improperly called, should betray its trust, and give up the dearest rights of their countrymen, still the nation cannot be completely ruined, till by losing or impairing the trial by jury she throws away the shield, and exposes herself unarmed to the merciless shafts of despotism.

Acquitted felons. The various attacks lately made on the liberty of the subject, and the freedom of the press, are a lesson to the nation; and, when the time comes for reformation, it is to be hoped, that sufficient precautions will be taken, to prevent in future a corrupt administration from squandering the wealth of the people in unfounded alarms, and from endeavouring to demolish, by a system of espionage, both publick and private happiness. The world has viewed with astonishment the trials of men acting upon the same principles, which their great accuser had been industrious in propagating; and, though an attempt has been made to slur the characters of the acquitted by the contradictory as well as ridiculous term of "acquitted felons," every true lover of his country rejoices at the triumph of these acquitted felons, that is, of innocence over guilt, of unprotected individuals over the arts of intrigue and treachery supported by wealth,

power, and influence. In the general joy on this subject the complaints of numbers suffering from the same cause in various parts of the kingdom are less likely to be heard; yet it is of use to expose the flagitious acts of tyranny, and to shew upon what an extensive scale its operations were framed. The publick mind was to be alarmed by vile insinuations; every person, who dared to think for himself, was to be called a jacobin, and a leveller; the influence of government was to be used in all places to crush the individual, who made use of a rash or thoughtless expression, or who more boldly expatiated on the notorious corruption and infamy of the higher orders.—As the wealth of the state was thus prodigally wasted, the wealth even of the university was not to be spared, when so laudable an object was in view as an attack on the liberty of the press. We live still “in happier times than those, when a Cranmer was dragged by an academick audience to the stake, or a Whiston was exposed to the arbitrary proceedings of a vice-chancellor and the heads of colleges *.”

Heads incorrigible. I rejoice that, notwithstanding much uneasiness which I have suffered, I do not feel sufficient reasons to alter this opinion. In Whiston's time the heads received no check, and their proceedings were not attended with any mark of publick indignation. The marks of disapprobation, with which the late conduct of this body has been received, will probably deter it from similar efforts in future. They may think indeed, that, by bringing the censure of books within their corrupted vortex, they have gained another mode of recommending themselves to the chiefs of administration; but the members of the university need not be alarmed, since very little caution is requisite to baffle the attempts of this im-

* See Preface to Thoughts on Subscription, p. 6, 2d ed.

pertinent inquisition, and by an easy mode of publishing they may laugh at the pursuits of a vice-chancellor and heads of colleges. I have not therefore done an injury to the publick, but by exposing the conduct of the heads have, it is to be hoped, effectually shaken their influence. I have shewn, that in all times they are the same, that their power must be destroyed; for they have made it manifest, that it cannot be exerted with dignity to themselves, or safety to the publick. But I will dwell no longer on this topick, as it remains only for me to make the proper use of the situation, into which I have been thrown, and to suggest to others what appear to me the best means of avoiding similar difficulties. To do this, I will shew how I was led into them; and, though few persons may be found in exactly similar circumstances, there will be some in which most of those, who dedicate themselves to literature, will feel an interest.

Account of the authour. My family, from the little that I know of it, seems to have been, for between the last two and three hundred years, in that class of society which Mr. Burke has decorated with the title of the "swinish multitude;" and though I was born just as honourably, according to the vulgar language on this head, and educated perhaps more liberally, than the right honourable gentleman, notwithstanding his contemptuous expressions, I do not in the least regret the situation in which providence chose to place me, nor feel the least desire to differ in rank and titles from my brethren of the swinish multitude, nor wish, except by their consent, to be placed in any office of trust or emolument. My father was one of the principal tradesmen in the city of Canterbury, in which place he and my brother have borne the office of mayor, an office for which I should entertain a greater esteem, if instead of being confined to the aldermen it were bestowed on any man in whom the citizens, uncontrouled in

their choice, placed a confidence. While I was very young, a turn for reading appeared in me, which was much encouraged; and, by the kindness of an indulgent father, no expence was spared on my education, and thus I became incapable of gaining by trade an easy subsistence. With the first expression of my wish to go to the university my father complied; and, though in a subsequent period he felt severely the disappointment of his expectations, when my prospects of success in life were cut off by the freedom of my opinions, he could never be induced to alter the current of paternal affection.

The life of a school-boy and a young collegian is described in few words; but I never reflect on mine, without recollecting my obligations to two persons for kindness, which it is not the lot of many in early life to experience. My father taught me to read, and from him I learned to pay great attention to an exercise neglected in general in our schools, and which I consider of more importance than most things taught in the common routine of education. Mr. Six of Canterbury is well known in the philosophical world; his son and I were intimate friends; and we, with two other of our common friends and school-fellows, received after school hours the benefit of his father's instructions. Thus were our minds enlarged, when very young, by an acquaintance with the easy topicks of natural philosophy; and by considering many things as play, which are looked upon in most places as serious tasks, we were with greater ease initiated into the severer studies of the university. This experience has convinced me, that much time is wasted in our public schools; and, if it is necessary that a few boys (for after all but a few boys ever arrive at excellence in this respect) should be taught to utter their thoughts in latin, and to quote with ease the greek poets, it would be better for the majority, that they should learn to read english well,

well, be made acquainted with the beauties of their own language, and those parts of natural philosophy, and the rudiments of knowledge, which will be the most useful to them in future life.

Conduct in the
university.

At the university my conduct resembled that of most other young men, who attain to what are called the honours of the place. A fondness for society led me to pass many hours in company; but I indulged much in solitary walks; and when alone, my time was dedicated to reading and thinking. On this point I have only to regret, that I did not follow more the advice of an experienced friend, who had quitted the university about thirty years before my admission into it: Read, said he, one hour and think two. This advice has since frequently occurred to me, and I mention it for the sake of younger students, who peruse my narrative. In consequence of it, I was led indeed to think on the different objects of my studies; but my attention was chiefly confined to mathematical pursuits. In this period of life, it can be expected from very few persons that they should pursue the study of religion. We sometimes had lectures on the greek testament, but they were little regarded; and the sermons, which we were obliged to hear, were not calculated to make a deep and lasting impression. In short, I looked forward, like those around me, to the time of taking our degrees, and my studies were chiefly directed to those subjects, which are now almost the only road to academical honours and emolument.

Discovers his re-
ligious errors.

In consequence of this application I became a high man, as it is called, being the second on the tripos or list of academical honours; and this distinction procured me the patronage of doct^r Caryl, the master of Jesus college, so that quitting Christ college, in which I had taken my degree, I was through

his interest first made fellow of his college, and soon after appointed by him to the tuition. Becoming thus early, that is, in little more than a year from the time of taking my degree, tutor of a college, I had sufficient employment on my hands; and it cannot be expected that divinity, a study of no great repute in the university, should occupy much of my time. I had more than sufficient knowledge for episcopal chaplains; and my reputation was too high for them to enter into a close investigation of my abilities. Various circumstances lead men to the train of thoughts, which materially alters their situation in life; and it is difficult for them to trace back to its source their departure from established opinions. I can remember only, that I was not much attached to authority: yet I had my prejudices against the dissentients from the established church, and conceived myself, like the generality of persons with whom I conversed, a believer in the trinity. As soon however as my office permitted me, I entered more seriously upon the study of divinity; and my faith probably was first shaken by learning the hebrew language, and consequently by paying a greater attention to the scriptures. I recollect also a circumstance, which might lead me to an acquaintance with those writers, from whom, without acknowledging the obligation, many of the modern divines have borrowed their opinions.—Previous to a little journey I was about to make, it might be two or three years after the commencement of these scriptural studies, I looked round our college library for a small pocket volume to amuse me on the road, and the racovian catechism falling into my way, seemed well adapted for the purpose. This book I took with me; and the plainness and clearness with which most of the propositions in it are laid down, made an impression on my mind; but though the comparison of it with the church catechism was not in favour of the latter, I was resolved not to involve myself in controversial divinity,

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till I had searched farther at the fountain head for the truth or falsehood of my opinions. The result of my enquiries was, that I made up my mind on the doctrine of the trinity, the great error of the christian world, and was thus freed from the shackles of the church; for, if it could deceive me in so essential a point as the nature of the being, to whom I had been taught to pay my adorations, it could have no pretensions in any other article to implicit obedience. Hence I studied theology with more ardour, making the scriptures my basis, and in every difficulty seeking for information from the voluminous exertions of the fathers, the *critici sacri*, the *fratres poloni*, and the valuable researches of later times.

Renounces them publicly. Having thus extricated myself from the errors of my birth and education, I thought it my duty to endeavour to release others from the yoke imposed on them by authority, and to place them in a situation, in which, if they did not imbibe my principles, they might at least have full scope for their own exertions. With this view I caused papers to be distributed about the university, giving notice of an intended grace to remove the subscription to religious tests; and the rejection of a grace to this purpose, proposed some months after by Dr. Edwards, gave rise to a publication, in which I thought it my duty to absolve myself from all future allegiance to the church, and to declare publicly my disavowal of its doctrines. This step was taken, as has been every other relating to my separation from the church, without consulting any person; and I did it with this view, that, as I had once given a publick sanction to the doctrines of the church, it became me now, that I had discovered my errors, and had a proper opportunity of doing it, to disavow them with equal publicity. My opinion of the propriety of this step has not been altered by the consequent conduct of others upon it;

it; and at the same time I do not take upon myself to condemn those, who in nearly similar circumstances act in a different manner. We are so framed by education and habit, that conscientious men will see the same things in different lights, and with equally good intentions there will be shades of difference in their actions. Some, on renouncing the errors of the church, will be content with resigning in silence its emoluments; others will think themselves bound to declare openly their conviction of these errors, and to give a publick testimony of their faith. In some degree it is the lot of humanity to act with apparent and oftentimes real inconsistency: there must be a time when a man begins only to suspect his errors; his conviction ripens by degrees, and during the period of conflict in his mind many uneasy sensations will arise, of which those, who subscribe without reflection, and maintain opinions without enquiry, can have no conception. Happily for mankind we shall be judged at the last day by one, who is conscious of our infirmities, and can make that allowance for them, which is not to be expected from a world, indulgent to its own follies and vices, but scrupulously severe in balancing the actions of all, who dissent from the fashions or prevailing doctrines of the times.

Is deprived of the tuition. In the system under which we live, to declare openly an opinion on religion is not quite so dangerous to an individual as in former ages; but he must make up his mind to bear a variety of slights, and not a few positive injuries. He will be treated frequently as the enemy of his species in this world, and piously consigned to eternal damnation in the next. The latter censure might be a subject only of mirth, if the maintainers of this opinion would only be content to resign their share of this world's good to the poor devil, whom they so charitably cut off from all hopes in the next:

next: but unfortunately no men are so tenacious of the happiness of this life, so eager in pursuit of its emoluments, and so zealous in depriving their heretical brother of all chance of success in every department, as these orthodox pretenders to sanctity, these real or hypocritical believers of the eternal state of the damned. It has indeed been said, that, by depriving me of the office of tutor, the master cleared his way to a bishoprick: but, not to inquire too scrupulously into his motives, let it suffice, that I was deprived of the tuition, because I declared my opinions; for it was well known, above a year before this declaration, that I had imbibed doctrines repugnant to those of the establishment; and not a hint was thrown out, that my lectures in the mathematicks could be at all injured by my theological pursuits.

Travels abroad. I was now deprived of my office of tutor, and by deprivation and resignation had lost above two thirds of my income. The sensation of comparative poverty was by no means agreeable; and I felt myself much at a loss, whether I considered my own private advantage or the best means of rendering service to the cause of truth. I explained my opinions more fully and publickly in the university, I conversed freely with the orthodox, I endeavoured, but in vain, to correct their misrepresentations. Considering in my own mind the various ways by which we are deceived, and that I might be too forcibly carried forwards by what others might call enthusiasm, though to the lukewarm the least degree of earnestness is enthusiasm, I resolved to divert my thoughts for a time by a tour on the continent. This tour was made just on the commencement of the french revolution, and the greatness of that event contributed still farther to divert my mind from theological pursuits. I rejoiced at the prospect of general freedom in Europe; I heard with pleasure that the chains of despotism were broken;

broken; I recollected the misery, of which I had been a few years before an eye-witness in a tour through France, and, if I pitied the sufferings of a fugitive clergy and nobility, I could not but reflect on the vassalage in which both orders held the people at large, in respect to religion and property. The distresses subsequent to the revolution do not change my sentiments of the two orders; the misery of anarchy is but for a moment, compared with the lasting tyranny, by which these two orders oppressed both body and mind. Their nobility was founded on a contempt of human nature, on an insolent distinction between themselves and their fellow creatures, on the ignorance of their mutual relation to one common parent; and, when this phantom of nobility presented itself to my mind, the moral contained in the excellent lines of one of our bards arose with it,

When Adam delved, and Eve span,
Pray, who was then the gentleman?

Returns to the university. On my return from the continent, I buried myself in the obscurity of a college. The straitness of my finances prevented me from mixing a great deal in society; but a select party of friends, both in the town and university, to whom a difference of opinion was not a sufficient ground for breach of friendship, relieved the hours not employed in study. I revised my sentiments with, I should think, a freedom from the prejudice which is supposed to possess the mind of one, who has publicly maintained them, and the great doctrine, that there is one god alone, the father of all, and one saviour, Jesus Christ, a man in all respects like ourselves, except the greatness of his mission, the superiority of his character from spotless obedience to his god, and the miraculous powers bestowed on him, was more deeply infixed on my mind. A freedom of conversation

sation with men of different sects in different kingdoms, led me necessarily to examine a great variety of doctrines : from comparing all together, there seemed to me to be a universal departure from the spirit of christianity.

In the church of Rome are ceremonies repugnant to the simplicity of the gospel, and dogmas founded on a supposed infallibility in a pontiff or a general council, which evidently oppose a precept of our saviour requiring us to call no man teacher upon earth. The ceremonies of the church of England are not indeed so glaring, but, though not so well calculated to impress the mind with superstitious awe, are equally repugnant to the christian character. This church has divested its worship of romish splendour, but retains in many places a childish imitation of pomp. Its priests, and no such priesthood is ordained either by Christ or his apostles, are distinguished by dress; its service is copied chiefly from the mass; and, if it pretends not to the infallibility of a pope or general council, it claims equal obedience to articles of human authority, and threatens equal damnation to those who swerve from certain points of its faith. Christ's kingdom is not of this world; but the rewards held out to the retainers of the church of England, and the zeal with which it opposes the sectaries of every other description, evidently prove that it is an institution rather of policy than of religion. It might naturally be expected that freedom of enquiry should take its abode among the dissenters, and that they who had renounced the authority of the church would be little inclined to arrogate to themselves any sort of spiritual authority: but the accounts given to me by many of their ministers of the pertinacity of most congregations in any once established mode of thinking, lead me to entertain a very different opinion of this body from that, which I should have formed from the perusal only of their best books, and the liberality of sentiment

ment prevailing among some of their most distinguished teachers. The meeting in London of the ministers of the three denominations, to present petitions or addresses, or to interfere at all as a publick body, seems to me to have all the bad effects of hierarchy, except temporal wealth and power: the receipt and dispersion of the regium donum, the distinction of clergy and laity, the experience or faith required in many congregations on the admission of a member, the articles imposed by societies which distribute money among indigent ministers, — these, with the almost general belief of a trinity, and a rigid adherence to the doctrine of Calvin, give me little encouragement to hope that the time is near at hand, when all shall be taught of god. The great error in all the above mentioned bodies seems to be too great an attachment to authority, an easy acquiescence in the opinions of their forefathers, and an indolence in examining the scriptures for themselves. The papist must give up the infallibility of his church, the protestant renounce his dependance on articles, canons and creeds, and each association of christians should consider that it has not attained to the whole truth, that the scriptures should be the rule of its conduct, and that to advance towards perfection should be the general desire. Does it become them to be angry with every one who mentions an erroneous translation in their common testaments, who points out to them a mistake in their prayers or psalms, who exhorts them not to be idle, but to think for themselves? Every error corrected opens the way to a future good, and it should be the endeavour of each man to leave his children a greater liberty and a more improved knowledge than he received from his fathers. We may pride ourselves as much as we please on the perfection of our knowledge; yet many generations will probably elapse before the follies grafted on our religion are entirely eradicated.

Employment in the university. My time was now chiefly taken up in a laborious occupation. A few men of letters thought that an edition of the bible, departing as little as possible from the present reading, but corrected by the various lights which have been thrown on it since the translation under the direction of king James, would be a very useful work, and contribute more than controversial writings to the removal of error. My share in this work was considerable, rather from the quantity allotted me, than the difficulty of the task. Yet the comparison of the pentateuch and the historical writings in our bible with the original and translations in several languages, and the pursuit of a question through a variety of authours, must be attended with no small expence both of labour and time. It is not necessary, however, to say much on a work suspended by various causes; part of it was lost in the flames enlightened by the blind zeal of the church at Birmingham; and for nearly these two last years my attention has been carried to other pursuits; and if I had now the inclination to pursue the plan, I am destitute of the books necessary in such an undertaking. During the time that I was immersed in this employment, the perusal of various popular writings, and the conversation of all around me, led me to reflect seriously on the state of the nation. I was not connected with any party; I had been a witness of the miseries of the French, but saw no reason for adopting all their principles, or their conduct in government. There were many defects and abuses in our own government; yet the lenient hand of reform seemed sufficient for their removal; and, to encourage this spirit in the governors and the governed, I wrote my pamphlet entitled Peace and Union. For suggesting the means of obtaining such desirable ends, I have been driven from my books, and deprived of a great part of my slender income; and I have been under the necessity of defending myself from the

the most contemptible assailants, and my time has been taken up on subjects most irksome to a man of letters.

Effect of censures
upon myself.

Thus I have fairly stated my situation, from which may be derived some useful reflections. The end of punishment, it is said, is either to reform the criminal, or to deter others from similar practices. In my case the punishment has been of no manner of use. I am not reformed from those opinions, which my adversaries condemn; but, on the contrary, am more tenacious of them than ever. By being deprived of the office of tutor, I gained more time for my own studies, and they have impressed deeply on my mind these truths, that there is only one god, and that the trinity is a fiction of bewildered metaphysicians. For avowing these truths I am insulted and injured; yet one end of punishment is not answered, for it does not change my opinion. Again, for publishing Peace and Union, I have suffered more injuries; yet to no purpose, for my mind remains invulnerable by the darts of my adversaries. So far from giving up my supposed errors, I find, on investigating the causes of complaint more closely, that I have erred in not giving my enemies greater occasion to exercise their malignity. In my pamphlet I recommended triennial parliaments, and a partial enlargement of suffrage; conceiving erroneously, that the people were not sufficiently enlightened for universal suffrage. I did not consider, that every individual was sufficiently enlightened to give his vote in his tithing, and to understand every law by which he ought to be affected; and that to the want of universal suffrage are owing the ignorance of the bulk of the people, and the corruption of the higher ranks of society. So far therefore from being reformed in this respect, wherever I have an opportunity, I am an advocate for universal suffrage and annual parliaments; declaring, however, at the same time, that I by no means wish to see these

these points carried by force; and exhorting all, who go to the same length with myself, to unite contentedly with others in any inferiour species of reform. If every householder obtains his right, or if the borough of Old Sarum only were disfranchised, a point is gained; and we may hope, by degrees, to rescue the people of England from the ignominy of not being represented in parliament.— With respect to the death of the late king of France, my sentiments are unaltered by the obloquy thrown out against me; and I still cannot conceive what right an englishman has to cut a frenchman's throat on that account, any more than he has to assassinate a russian for the deposition of the late czar. Till some more convincing reasons appear, than the minister and his adherents have as yet condescended to bring forward upon this event, I must say as before, that, if all the kings on the continent were put to death by their subjects, it is not our business to punish their conduct. We should be indignant at their presuming to change our government; and what pretext can we have, from a change in theirs, to interfere in their internal concerns? On the distresses of the poor it is to be lamented, that there is still less reason for a change of opinion. I see clearly the difficulty of raising taxes so as not to oppress them; and I am convinced, that as rich men are the great gainers by war, either by contracts, loans, commissions in the army and navy, titles, commissaryships, or other similar gratifications, the whole expence of war should be confined to the rich. The subject deserves a fuller investigation.— May not war be considered as a lottery, of which the worst effects fall upon the poor? They are enticed or taken away by force from their families, are subjected to hardships, the chance of wounds or death; and the honour, if honour is to be gained by murder and bloodshed, falls not to their lot, but to an indolent spectator it may be of the bloody conflict. The rich contribute

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indeed,

indeed, and boast frequently of a paltry contribution of a few hundred pounds, which are repaid to them tenfold in commissions or sinecures; and they, who do not directly or indirectly receive any emolument from the war, who have no concern with loans, nor solicit a single favour for themselves or their relations, would be shocked, when their cry for war was stopped by a demand of half their income to carry on their bloody purposes. The horror of war is so great, that we should be all interested in making the period of its career as short as possible; and, on reconsidering the subject, it appears to me a desirable measure, that on the first declaration of war, the war contributions should instantly take place in a proportion nearly of this nature. Out of an income above forty, and under a hundred pounds a year, let one tenth be annually dedicated to the war expences, two tenths of an income under five hundred a year, three tenths of one under a thousand, four tenths of one under ten thousand, and so on in the same proportion for superiour incomes. Let these contributions continue till the whole expence of the war is paid, and I have then not the least doubt that the period of it will be much shortened, and its object will be well understood. On the subjects of academical enquiry, it is needless to expatiate; some opinions imputed to me I did not maintain, and the others are not of any consequence: suffice it, that the court, which condemned me, never pointed out what it approved or disapproved of in my pamphlet, and consequently its censures cannot lead to my reformation.

Effect upon others. But if I have not been reformed, others, it may be said, will be deterred by my example. Deterred from what? from improving their minds by study, or from communicating with the publick the benefit of their leisure. To destroy study no man can wish, or at

least he will not have the confidence to avow such a desire: and if he permits the student to glean information, by what art can the mind be enchained and ensured to maintain established opinions? The thing is impossible. My example cannot deterr studious men from reading and thinking, and consequently from departing, as I have done, from the system of our forefathers. If it deterrs them from publishing their sentiments, they will still diffuse them more earnestly in private; and the stream pent up will in time break down its banks, and carry destruction over those plains which it was designed to embellish and improve. The thoughts of studious men are not their own; if the publick gives them leisure, they are bound to make a proper acknowledgement for it. By their very errours the publick may be benefitted; and a clash of sentiments cannot, unless the arm of power interferes, be injurious to the publick good. Should any one be deterred by my example, it can be only from some disgraceful motives, which have gained the ascendancy over his mind: for either he will not study at all, or, having discovered what is important in his opinion and proper to be divulged, he will not have the courage to make the least sacrifice to truth.

To whom useful. But, though the treatment I have received cannot answer either of the supposed ends of punishment, cannot reform me, or deterr others in a similar situation from pursuing a similar mode of conduct, it might be made of use to fathers of families, to universities, nay, without vaunting, I might say to the governors even of states. Fathers might be led by it to reflect seriously on the danger, to which they frequently expose the morals and the happiness of their sons. An enlarged mind cannot fail of pursuing truth, and it is the father's wish, that the son should excell in knowledge: yet improvements in knowledge, if shackled with tests and subscrip-
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tions,

tions, may lead to no small disquiet; and the temptation of swerving from duty is too great to be presented with open eyes to any one. Whatever sentiments the father maintains, my example proves, that a studious son cannot be restrained by them: and, as long as opinions are sanctioned by authority, every man has reason to fear that his son may be a sufferer. The petition of christian fathers to the common father of all is, *Father, lead us not into temptation*; yet how little do christian fathers, teachers, governors, think of this prayer, since they not only neglect the proper means of preserving their sons, their pupils, and their subjects from evil, but absolutely place them in the way of the basest temptations! Universities are called upon by the injuries, which I have received in one of them, to investigate the nature of their institutions, to impose no longer on themselves or others, but to consider, as in the presence of God, how solemn it is to swear before him, how criminal to exact an oath from younger students, which the superiours themselves do not perform; how wicked to demand subscription to a system of religious doctrines, when every page in history shews their fluctuation; how detestable to persecute for opinions in those places where least of all the faculties of the mind ought to be restrained; how futile to act in opposition to truth, when the banishment of an individual creates in those who remain a greater spirit of enquiry. The governors of the state might be interested in examining, what share they have in promoting acts of tyranny and oppression. Inferiour corporations will not be active, unless under the idea that their zeal meets the approbation of their superiours, and on this account every good government will be careful not to encourage by its institutions, the folly or oppression of inferiour magistrates. The improvements in knowledge within the two last centuries have materially altered the sentiments of this country; yet many of the old laws remain, and are re-
tained

tained with the sole view of giving a check, whenever opportunity offers, to farther improvement. Would it not be wiser to remove every law founded on ignorance by our ancestors; and thus by taking away the cause of disquiet to create a much greater degree of union and harmony? That the laws now in force cannot destroy the principle of enquiry will be evident to any one, who reflects on the real state of this country: they deter neither myself nor others; and I am credibly informed, that the persecution of me has excited a much greater curiosity to investigate my opinions, than could have been procured by the slight efforts of common publication. The arm of power is in vain lift up to crush a few individuals, whose ruin, of whatever consequence it may be to themselves, cannot, in the course of time, and according to common experience, fail of undermining the strength, and accelerating the fall of their oppressors.

Address to students. But it cannot be expected from many fathers, from universities, or from the state, that the fate of an individual should counteract their mistaken views of private interest. I hasten to speak to young men, to those who are entering upon the theatre of life, to such as might otherwise be discouraged by the difficulties, which many in common with myself have been forced to encounter. If ye have the laudable desire of improving your minds, encourage it to the utmost: under every thing that has befallen me, it has, with the idea of performing a duty, been a source of consolation. Beware of being misled by the artifices of men; subscribe not to any doctrines or opinions, which ye cannot sanction from examination and entire conviction. Let not the prospect of mercenary emolument allure you to so base an act: for be assured, that it will either deprave the mind, and sink it into greater infamy, or render your future life subject to many uneasy reflections. At first I subscribed

carelessly as all around me did : afterwards I fancied that the doctrines imposed on me were true ; and, if I could not extricate myself without much uneasiness and trouble, what will be your situation, if that uneasiness is sharpened by the sting, that ye were sensible of the impropriety of your first step ? The question to be fairly examined by you is this : Have ye examined, and do ye believe the propositions submitted to you ? and an upright mind will despise the sophistry of Mr. Paley's philosophy in answering such a question. Yet ye will say, What is to be done ? I have expended my little fortune in preparing myself for a profession, or in expectation of the emoluments, which the university affords. I answer, What is to be done, when ye find out your errors ; when your mind grows uneasy in the possession of some, and the prospect of greater preferments ? Do what is right : be fully persuaded in your own minds, and leave the rest to providence. Your situation may not be envied by your competitors, rising to fame and wealth ; yet ye will hardly want food and raiment, and with proper exertions, the peace in your own breast will be more than a sufficient counterbalance to the wealth and honours, which your principles forbid you to enjoy.

Excitement to industry. Many of you probably have been brought up with the expectation of an easy livelihood in the church, and of dreaming away your days in that indolence, which is its chief characteristick. Ye must renounce such hopes, and endeavour to be useful to society. Your talents must be employed in some active pursuit, and the means of your support will depend in great measure on your own exertions. This is now my fate : and to one, who does not wish to be a burden to society, the prospect is not wholly unpleasing. As my time has been hitherto employed in study, I cannot easily accommodate myself to the occupation of the merchant, the farmer, or the

the manufacturer : yet there are many other ways of being useful in society ; and the division of labour is beneficial in subjects connected with literature. Some have excellent ideas, but are not accustomed to commit their thoughts to writing ; they may wish to present the publick with an account of their voyages, their journeys, or of their reflections in any other mode of life, and to them, from my education, I might be capable of rendering assistance. The barrister is consulted on points of law ; and on his superiour knowledge or superiour eloquence depends his mode of subsistence. Prevented by an absurd regulation from entering upon that, which appears to me the best part of his office, I shall not intrude upon the other : yet perhaps I might be of use to some, in drawing up a case without technical forms, on which the opinion of the profession might be asked, the chance of success conjectured, or the truth or falsehood of a claim be made so manifest to common sense, that an honest mind would not even wish to obtain his end by the intricacy and fraud of legal phraseology. In the drawing up of memorials, in lectures on elocution, in any other employment suited to a man of letters, I would willingly employ myself ; and, with the intention of thus dedicating part of my time to the service of others, I look forward only to a proper independance, and the means of making my leisure hours more beneficial to myself and the publick.

Misrepresentations By shewing to young men entering into life, what my hopes and my prospects are, I may put them upon thoughts, in what manner to employ their time, so as to preserve the true spirit of independance. I may also correct the false notions, which they might otherwise have imbibed from some strange misrepresentations, that the events, which have befallen me, have been beneficial rather than injurious to my fortune ;

tune ; that I have received, from some unknown quarter, more than sufficient to repay me for loss of time and my exertions. On many accounts it is right that such ideas should be corrected, or youth might grow presumptuous, instead of receiving that instruction, which may be derived from my example. The fact is, that instead of the affluence, which some have attributed to me, and which I never either solicited or expected, my income has been considerably diminished : that, indebted as I am to my friends for assistance in support of what seemed to them and myself a publick cause, the whole of their subscriptions has been employed in that cause, and in the same cause I have cheerfully sustained myself a considerable expence. Let the readers therefore, whom I am addressing, not feed themselves with delusive hopes : the road before you now divides itself ; if your choice leads you to that which is rugged and steep, do not expect the ease and comfort, which are the lot of travellers on the other. In the career which ye have chosen, ye may be useful to yourselves and society ; and upon the whole, the difficulties ye have to encounter may, to a philosophical mind, render your journey through life as desirable as that which seems to be strewn only with flowers.

Conclusion. At any rate I may conclude with the advice before given to you : Do your duty, and leave the rest to providence. Be not deceived by the example of others into error : he who feeds the ravens, and in whose sight a sparrow is not without its value, will provide for your necessities. Too great anxiety after the things of this life is unbecoming in a christian, and will certainly lead to disappointment ; do your duty, as upon a close investigation of a question, and without sophistry or misapplication of your talents, every thing strikes you ; and for the rest rely with confidence on the protection of heaven.

APPENDIX.

No. I.

Copy of the paper relating to Whiston, in Dr. Kipling's
affidavit.

Octr. 20^{mo}. 1710.

Whiston's
sentence.

CORAM Dno. procanco. assident. &c.

comparuit Mr. Flackham, Townsend,

&c. et jurat. deposuerunt.

Decret. Mrm. Whiston monendum fore
ad comparend. 23

Put in scriptis 23

Put in scriptis 25

Put in scriptis 30

Dr. Roderick

Sir J. Ellys

Dr. Gower

James

James

Blithe

Covel

Balderston

Quadring

Richardson

Ashton

Fisher

Lany

20^o Octobr.

1710.

Unde Dns. procancellarius, assidentibus
et consentientibus.

Colliorum præfectis, sententiam ferendo
decrevit, declaravit et pronciavit, prout
sequitur :

In the name of God, Amen. I, Charles Roderick,
vice-chancellor of this university, do decree, declare, and
pronounce, that Mr. William Whiston, mathematic pro-
fessor of this university, having asserted and spread abroad
divers tenets contrary to religion received and established
by public authority in this realm, hath incurred the pe-
nalty of the statute ; and that he is banished from this
university.

Lata fuit humoi. sentia. per dnum.
procanc. præfente me ROBERTO. GROVE,
not. pub. et almæ universit. præd. regro.

No. II.

OBSERVATIONS

ON THE

AFFIDAVITS FILED BY THE UNIVERSITY.

The following observations came from the same highly respected friend, whose remarks on Whiston's case are given in page 52.

THE first part of the first affidavit is, if not designed, plainly calculated to mislead the counsel, and through them to impose upon the court. Dr. Kipling states in it, that he has carefully examined the statutes of the university; that is, as every one must understand him to mean, those in force, by which the university is now governed: he then quotes three statutes, the first of them from queen Elizabeth's first body of statutes, and the two others from her second, taking for granted the authority of each: but although there may be reason for allowing the authority of the old statutes, since the reception of statutes from the crown; there is none for ascribing any to the first body of queen Elizabeth's statutes, since the second was accepted by the university.

Dr.

Dr. Kipling hath alledged neither authority nor practice in favour of these statutes ; the repeal of them might be easily supported by both : but it is unnecessary to enter into the general question ; it is sufficient to observe, that the particular statute cited by the Doctor from the first body under the title “ *De cancellarii officio*,” is formally repealed, because expressly altered by that, which bears the same title in the second. The difference between the two statutes, in that part of them which is of any importance in the present question, is too obvious to escape the notice of any person, who pretends to have carefully examined them, and must therefore have been seen by Dr. Kipling ; but he was too modest to take upon himself to determine, whether, in case of two statutes given by the same authority being inconsistent with each other, the first was repealed by the second, or the second by the first. He chose rather to submit the point to the court, *et si curia vult decipi, decipiatur*.

It is clear that the Doctor saw the difference : he would otherwise no more have quoted the first with the second, than he did that of Edward the VIth, from which the first is copied ; indeed he must be supposed to quote it, on account of the difference, the first being something to his purpose, and the latter nothing. This was perceived by the attorney general, who contended, that the statute *de cancellarii officio*, in the first statutes of Elizabeth, and that bearing the same title in her second statutes, give power to the vice-chancellor to punish certain offences, *judicio suo* with the assent of the heads, which must be understood to mean proceedings in his own court, and is perfectly consistent with the wording of the statute *de concionibus* : but who can help seeing that this boasted consistency of the statute *de concionibus* is with the statute *de cancellarii officio* taken from the first statutes of Elizabeth, and not with that which stands in her second, and is alone of any authority ?

authority? And the foundation being removed, the reasoning built upon it falls of course to the ground. There is room to doubt whether the words "*judicio suo castigandos*," in either statute, whether with or without the assent of the heads, must refer to proceedings in the vice-chancellor's court; and supposing the same consistency in point of expression between the statute de concionibus and the statute de cancell. officio in the 12th of Elizabeth, as is allowed between that and the one in the 1st of Elizabeth, the vice-chancellor's conduct in citing Mr. Frend into the court of the university might still be questioned, as it seems by no means to follow that the jurisdiction must be the same in all respects, because exercised by the same persons. The lord chancellor of England, the chancellors of the two universities, and in their absence, in some instances, the vice-chancellors are visitors of several colleges; but in cases of appeal from these colleges, the members of them, though otherwise subject to the jurisdiction of their respective courts, are not usually cited into the court of chancery, or into that of either of the universities. But the statute de cancell. officio, cited by Dr. Kipling from queen Elizabeth's first statutes, may not only be proved to be of no authority, from its repugnance to that which bears the same title in her second: the same may be likewise shewn from the practice of the university in the three cases sworn to by the Doctor himself in his second affidavit. In the two first the vice-chancellor suspends ab omni gradu, &c. without the assent of any head; and in the third he punishes without the assent of a majority of the heads. Now if the statute de cancell. officio, given in the first year of queen Elizabeth, and not that given in her 12th year, were in force, the vice-chancellor could in no case *judicio suo castigare*, without the assent of a majority of the heads of colleges; I say a majority of the heads of colleges, for not only the reason of the thing speaks that to be the sense of the words "*cum assensu præ-*
fectorum

fectorum ædium ;” but if that sense be disputed, the attorney general must bid farewell to all consistency of that statute with the wording of the statute de concionibus, as in the latter the assensus majoris partis præfectorum collegiorum is expressly required.

I observe further, that if Dr. Kipling’s affidavit be true, that is, if the statute first quoted by him be in force, it renders the concluding clause of the affidavits made by Dr. Colman and Dr. Farmer perfectly trifling and ridiculous ; for what could be more trifling or ridiculous than to affirm upon oath, that it is made necessary by the statutes of the university, and has always been the usage of the court, as far as they know, for a majority of the heads of colleges to assent to the vice-chancellor’s sentence in some one particular instance, if it were generally allowed that such assent was by the law of the university requisite in all cases ?

To speak plainly, and at the same time dispassionately, if the reasoning employed in examining the first part of the first affidavit against the authority or validity of the stat. de cancell. officio, in the first statutes of queen Elizabeth, be thought conclusive, I must own I do not see how the person who made that affidavit can escape the charge of wilful perjury, without pleading such a degree of ignorance, as ought as effectually to disqualify him from giving evidence in any cause which depends on a knowledge of the laws of the university, as the charge itself would from giving any evidence in any cause whatsoever.

ARGUMENT drawn from the 30th cap. of Q. Eliz. statutes, intitled “ De electione procuratorum, and from the 38th, De præconum numero, &c.

The words of the former are “ Quos (procuratores) sic nominatos et præsentatos regentes eligere omnino tenebuntur, nisi legitima causa sive exceptio contra eosdem coram procancellario allegata, et coram eodem et maiore parte præpositorum collegiorum probata et approbata fuerit.”

The words of the latter are, on occasion of certain offences, “ Cancellarius, advocatis sibi procuratoribus et ædium præfectis, cum assensu majoris partis eorum præconem munere suo dejiciet.”

The jurisdiction given to the vice-chancellor and heads by the statute de concionibus, seems to be of the same nature with that given in one of these statutes to the same persons, and in the other to the same persons with the proctors, and ought to be exercised in the same manner. But I imagine no body will pretend that the latter jurisdiction ever has been, or would be, exercised in the manner the former has lately been ; that is, that a bedell, or person nominated and presented by his college to the office of proctor, ever hath been, or ought to be, cited into and subjected to a formal trial in the court of the university.

An ACT of PARLIAMENT was passed in the 13th of Eliz. confirming the privileges of the two universities.

The charter given by her, and those prior to it, were confirmed by this act, but not the statutes given in the preceding

preceding year. By these charters the whole power of the court of the university is understood to be lodged in a chancellor; and to this day that part of the power of the court, which is exercised by the chancellor's commissary, a patent officer under him, is exercised by him alone, an appeal only lying to the vice-chancellor, as one does from him to the senate.

From these premises the following questions may arise.

Are not such parts of queen Elizabeth's statutes, as are inconsistent with the power given to the chancellor by charter, tacitly repealed by the act of parliament above mentioned?

And is it not therefore legally impossible that the jurisdiction given in the statute de concionibus to the vice-chancellor and heads should be exercised in the chancellor's court?

I pass over, for the present, the second part of Dr. Kipling's first affidavit, remarking only, in addition to my observations on Mr. Whiston's case, that the reference "prout in scriptis," thrice repeated, is applicable to any written account, and that I suppose the technical language of a reference to proceedings in the vice-chancellor's court, which might be expected from an officer in the court, would be "prout in actis." Concerning Dr. Kipling's second affidavit I shall have no reason to make any observation; I proceed therefore to make some on the affidavits of Dr. Colman and Dr. Farmer. These are entirely the same; and, after stating their respective residence and stations in the university, and out of it, and that they have both been twice elected into the office of vice-chancellor, set forth, 1st, "That there hath been immemorially within the univer-

"sity,

“ fity, as they believe, a court called the vice-chancellor’s
 “ court.” This is true, as far as they intend, namely,
 that the court, now called the vice-chancellor’s, hath im-
 memorially fubfifted, though not under that denomination.
 2dly, “ That the faid court hath been held, as well in the
 “ lodge or chamber of the vice-chancellor, as in the con-
 “ fistory or law fchools, or other public room within the
 “ univerfity, at the difcretion of the vice-chancellor for
 “ the time being.” This does not appear to me to be
 quite confiftent with the citations of Waller and Duckett,
 which make part of Dr. Kipling’s fecond affidavit, and
 are the only ones produced. The language of thefe is :
 “ in the confistory, the ufual place of judicature, in (or
 “ fitate within) the univerfity.” In Duckett’s cafe the
 court was held by adjournment in the lodge of Trinity
 college, not in that of the vice-chancellor, becaufe Dr.
 Bentley, the mafter, whofe prefence was neceffary to make
 a majority of heads, was unable to come to the law fchools.
 3dly, “ That the faid court hath, as they believe, taken
 “ cognifance of offences againft the ftatutes of the uni-
 “ verfity, as well as of other offences.” I much doubt
 the truth of this affertion, though I do not entertain any
 doubt of their belief of its truth. It can only be fupported
 by a feries of offences actually punifhed by the court,
 which were not offences by any law of the land, which
 were not attended with publick difturbance or private in-
 jury. Till the right of the court of the univerfity, to take
 cognifance of offences againft the ftatutes of the univer-
 fity, fhall be eftablifhed by a feries of inftances under the
 reftriptions above mentioned, I fhall think myfelf juftified
 in denying it on the following grounds. It cannot be
 fhewn that fuch a right is given in any of the charters
 granted by the crown. The power granted in thefe char-
 ters is not the power of punifhing actions not punifhable
 by any law of the land, but the power of hearing and de-
 termining fuch cafes as were cognifable in other courts,

in a peculiar manner and form, and of punishing *secundum leges et consuetudines suas*, i. e. by suspension or deprivation of degrees, *vel secundum statuta regni jam edita seu in posterum edenda*. It was observed by lord Mansfield, in the case of Dr. Ewen, that the charter, meaning, I suppose, that of Elizabeth, from which the foregoing words are taken, speaks of common law crimes. Such a right or power comes not within the reason or design of these charters. The design of these charters was to establish or confirm a *forum domesticum* for the convenience of the members of the university, to which they might resort in all cases in which they were parties, and be thereby secured from being cited into distant courts, to which they would have been otherwise subject: but they were not subject to other courts in cases of offence against their own private statutes only. These, I may presume, every society has the power of hearing and determining on the spot. The reason then of the power given being considered as the just measure of its extent, I conclude that the court of the university hath a right only to take cognisance of those offences, which would be otherwise cognisable by some other publick court, civil or ecclesiastical.

Five instances of persons censured in the court of the university for different offences occur in the affidavits made by Dr. Kipling. I said before that I should have no occasion to observe any thing concerning them; but as they may have been brought forward with the view of supporting that part of the affidavits made by Dr. Colman and Dr. Farmer, which I have just examined, and may be considered by them as the just foundation of that belief they have asserted: I will attempt to shew that not one of them comes up to the point they wish to establish, namely, the right of the court to take cognisance of offences merely statutable.

Waller was punished for a libel, an offence indeed against a statute of the university, but one also against the common law of the land.

Ducket was punished for atheism, a crime against which no one would expect to find a law in the statutes of a university.

Latham was suspended *ab omni gradu suscipiendo*, because he was out of his college in the night, and went to houses of ill fame. His crime consisted in frequenting houses of ill fame, and not in being out of his college in the night, as that, no particular law being stated, might be perfectly innocent. Now, though no person would look for a law against atheism in the code of a university, most persons perhaps will expect to find one against fornication. But such would be disappointed. No statute against that crime, or what might justly render a person suspected of it, as the frequenting of houses of ill fame, was ever enacted by the university before the year 1750: the reason was, that the crime was always punishable by the ecclesiastical laws of the kingdom, which the court of the university had always the right of executing. As a proof that no law of the university existed so late as the year 1675 against frequenting houses of ill fame in general, the vice-chancellor and heads, as a caution to young men not to expose themselves to ecclesiastical censures, decreed, "That no scholar shall go into any house of bad report in Barnwell, on pain of being expelled the university." This, though no law, for the vice-chancellor and heads have not the power of making laws, was a proper caution, and at the same time a declaration what punishment might be inflicted on such offenders against the laws of the church. That Latham's punishment, though subsequent in time, was not immediately founded on this

decree, is evident from its differing from that specified in the decree.

Rutter and Osborne were both suspended *ab omni gradu suscipiendo*, not simply for being out of their colleges at unseasonable hours in the night, but for quarrelling in the streets, an offence against the peace of the town.

In the last case an undergraduate and a bachelor are charged with making a violent assault on the house of an inhabitant of the town, and behaving in a very indecent and scandalous manner to him and his family, reflecting on his daughters as unchaste women.

The offences charged in this last instance appearing in the course of the trial to have been committed at a very late hour of the night, the vice chancellor mulcted each of them 6s. 8d. according to a particular statute. This the vice-chancellor had a right to do, though that circumstance made no part of the complaint against them, the offences being the same, and equally subjecting them to the censure of the court, whether committed in the night or in the day.

But it is time to return to the affidavits under consideration, the 4th clause of which sets forth, “ That they
 “ knew not of any court of the vice-chancellor and heads
 “ of colleges distinct from the vice-chancellor’s court
 “ above mentioned, or of any jurisdiction which the vice-
 “ chancellor and heads of colleges possess or exercise dis-
 “ tinct from that which the vice-chancellor possesses and
 “ exercises in the said court.” Nobody, I suppose, pre-
 tends to know of any court, strictly so called, of the vice-
 chancellor and heads of colleges, distinct from the vice-
 chancellor’s court. But when they say they knew not of
 any

any jurisdiction which the vice-chancellor and heads of colleges possess or exercise distinct from that which the vice-chancellor possesses and exercises in his court, I must beg leave to recommend to their consideration the jurisdiction given to the vice-chancellor and heads in the statute before referred to, in the case of a person nominated to the office of proctor, but objected to on some account, within a limited time ; and to that given to them in another statute, in the case of a bedell accused of certain crimes, to which it is contended, that the jurisdiction given in the stat. de concionibus is perfectly analogous, and ought to be exercised in the same manner. The last clause, however true in itself, was observed at setting out to be rendered trifling by the first part of Dr. Kipling's first affidavit ; but for that, not Dr. Colman or Dr. Farmer, but Dr. Kipling is answerable.

I come now to the second part of Dr. Kipling's first affidavit. The only things observable in it are the cases of Rush, fellow of Christ-college, and Adams, fellow of Peter-house. The former happened in the year 1609, thirty-nine years after the stat. de concionibus was enacted, and the latter in 1637, twenty-eight years after the former instance, and 67 after the statute was enacted. Though it is well known that several instances of persons censured under that statute occurred before Rush, and probably some others between him and Adams, theirs are the only ones that have been thought to furnish any thing to the purpose, i. e. to the vindication of the vice-chancellor's proceedings in the court of the university against Mr. Frend. Let us see how well they are calculated to effect this. Mr. Frend complained of being called into the vice-chancellor's court. Is there any evidence of Rush and Adams being called thither ? Dr. Kipling does not swear that the proceedings against them are part of the

Acta Curiae, or taken from any register or book so intitled : he only swears that they are taken from books or papers in the possession of the registry, which they might be, without being any thing to the purpose. This is the more remarkable in the cases of Rush, Adams, and Whiston, as all the other cases in this and the subsequent affidavit are either expressly stiled acts of court, or said to be extracted from books bearing that title. If Dr. Kipling could have given evidence upon oath, that the cases of Rush and Adams were taken from the Acta Curiae, he doubtless would, as the interest of his cause so much required it. Mr. Frend complained of being cited by the vice-chancellor alone. It does not appear, from his case, that Rush was so cited ; and it appears that Adams was first ordered to appear by the vice-chancellor and heads. Adams was absent from his college at this time. No citation, however, was sent to him ; but his return, in consequence of a letter from a friend, was expected at the end of a second month. Mr. Frend objected to a trial in an open court. Not the least ground for any complaint of this kind was afforded to Rush or Adams. There is no mention of crier or witnesses, or any other persons but the vice-chancellor, heads, and registry. Mr. Frend objected that no pains were taken by the vice-chancellor and heads to induce him to renounce his errors by arguments against them. Much pains of that kind appear to have been taken with Rush and Adams. Mr. Frend objected, that no erroneous opinions were stated in the form of recantation offered to him : in the forms of recantation presented to Rush and Adams, the erroneous opinions advanced by them were particularly specified. Mr. Frend complained of being subjected to a sentence in publick court : in Adams's case no sentence was passed, but the meeting dismissed : and that passed upon Rush has also the appearance of a private act, it being attested, as was that of Mr. Whiston, by the registry,

gistrary, in the presence of another person. Rush's sentence included likewise exclusion from his college, as well as banishment from the university.

From this comparison of the two cases with that of Mr. Frend, the internal circumstances of them seem to conspire with the want of external evidence to the contrary, to shew that they were not transacted in the publick court of the university, or, if we could suppose them to have been transacted there, that the conduct of the vice-chancellor in his proceedings against Mr. Frend was the most irregular possible in many respects, and contrary to the only precedents alledged in vindication of it.

5th November, 1794.

P. S. Mr. Frend objected to a promoter; none appears in either of the cases.

No. III.

EXTRACTS FROM DR. KIPLING'S AFFIDAVIT.

THO. KIPLING, D.D. and deputy regius professor of divinity in the university of Cambridge, faith, that he hath carefully examined the statutes of the said university of Cambridge, and amongst them are three statutes, respectively made and granted by the late queen Elizabeth, in the first and twelfth years of her reign, and respectively entitled "De Cancellarii Officio," and "De Cancellarii Officio, cap. 42," and "De Concionibus, cap. 45;" and that in the said three statutes are contained the several laws, ordinances, and injunctions, provisions and directions, as are contained and set forth in the three several paper writings hereunto annexed, marked respectively with the letters A, C, and D; and the deponent further faith, that he hath also carefully examined the several books and papers and records of the said university, which are kept by the registrar of the said university, and in his possession; and that in such books, papers, and records, are contained the several cases, judgements, sentences, and other proceedings, as are set forth in the several paper writings hereunto annexed, marked respectively with the letters E, F, G, H, and I.

Letter A.

Statuta Reginae Elizabethae anno 1^o edita.

De Cancellarii Officio.

Cancellarius potestatem habebit ad omnes omnium scholasticorum atque etiam eorum qui scholasticorum famuli sunt

sunt controversias summarie et sine ulla juris solennitate præter illam quam nos præscribemus secundum jus civile et eorum privilegia et consuetudines tum audiendas tum dirimendas ad congregationes graduatorum et scholasticorum convocandas ad homines dignos gradibus scholasticis ornandos qui omnia munia scholastica his contenta statutis expleverint et ad indignos rejiciendos ab iisdem et repellendos ad omnes eorum violatores puniendos ad providendum preterea ut singuli academici ministri in suo officio se contineant ignavos graffatores rei suæ dissipatores contumaces nec obediens suspensione graduum carcere exilio aut alio leviori supplicio iudicio suo et assensu præfectorum ædium castigandos.

Letter C.

Statuta Reginæ Elizabethæ anno 12^o edita.

De Cancellarii Officio, cap. 42.

The same words are used as above, as far as "carcere"—
aut alio leviori supplicio iudicio suo castigandos non licebit tamen cancellariis aliquem scholarem exilio mulctare aut aliquem pileatorum aut præfectorum collegiorum incarcerare absque consensu majoris partis præfectorum collegiorum.

R U S H's C A S E.

Letter E.

Septembris 15^o 1609 foris Dn^o Procanc. &c. in Pntijs Dm Ratcliff Richardson Branthwayt Coval et cora M^{ro} Chapman.

Officiu Dni & Nicholau
Rush in artibus M^{rm} ac
Collij Xti in Univers. Cant.
Sociu.

ADAMS's

A D A M S ' s C A S E.

Letter F.

Att the Consistory 17^o Julij A^o Dom. 1637,

Present

Doct^r Comber procan.

Doct^r Beale, Doct^r Bambrigge

Doct^r Laney

Doct^r Martin

Doct^r Eden.

It is decreed that Mr. Adams shall be warned to appeare this daye month and bring in his sermon.

Att the Consistory 14^o Augusti 1637,

Present

Doct^r Comber, Dean

Doct^r Beale, Doct^r Smith

Doct^r Martin.

It is decreed for Mr. Adams of Peterhouse to appeare this daye, and this daye Mr. Hughes returned and certified that he had sought for Mr. Adams according to Mr. Vice-chancellor's decree, made 17^o July 1637, and that Mr. Bankes the president tould him that Mr. Norwich tould him that he had sent a letter for Mr. Adams to appeare accordinge to Mr. Vice-chancellor's decree, and that as yet he heard no aunfwear of that letter, and therefore he desired that he might be expected for a month, or such time as Mr. Vice-chancellor shall think fitte. Unde facta precognizance po pred Mro Adams non comparente Dominus expectavit eum in istum diem ad mensem.

Die Lunæ viz. 11^o die Mens. Septembris 1637,

Present

Doctor Comber, pcan.

Doctor Smith

Doctor Beale, Doctor Bambrigge

Doctor Love, Doctor Bromrigge

Doctor Sterne, Doctor Batchcroft

Officiu Domini con

Mru Adams . . . ,

Mr. Adams expectatur in hos quibus, &c. peco.

M^{ro}. Adams non co continuatur causa in istum diem ad mens.

Die Lunæ viz. nono die mens. Octobris Anno Domini
1637,

Present in consistorio

Doctor Comber, pcan.

Doctor Collins, Doctor Warde

Doctor Sterne. Doctor Bambrigge came afterwards, while Mr. Riley was there, but after Mr. Adams was gone.

Letter

Letter G.

ACTS OF COURTS, 1752.

At a court holden in the consistory of the university of Cambridge, between the hours of ten and eleven on the 25th day of June 1752, before the right worshipful John Wilcox, D. D. vice-chancellor, the right reverend Edmund Lord Bishop of Chester, the worshipful John Newcome, Roger Long, Wm. Richardson, Robert Smith, Fra. Sawyer Parris, John Green, Kenrick Prescot, and Philip Yonge, respectively, D. D. being his assessors.

Me present. T. Bennett, Notary Publick.

The office of the Summons went forth, which being judge promoted by returned, and proclamation made, said Zach. Brooke, B. D. Waller appeared, and was charged by against William Mr. Brooke with being the author of a Waller, B. A. prophane blasphemous libel, intituled David's Prophecy, &c. which libel was then delivered into court. Said Waller confessed that he was the author of the said book which was then shewn to him, and that he delivered it to be printed and published; that he was sorry for it, and declared that he was not now in the same sentiments as when he wrote it.

The judge deliberated, and adjourned the court to four o'clock in the afternoon in the consistory, when and where said Waller was admonished to attend.

At

At a court holden between the hours of four and five in the afternoon, on the 25th day of June 1752, in the consistory of the university of Cambridge, before the right worshipful John Wilcox, D. D. vice-chancellor, the right reverend Edmund Lord Bishop of Chester, the worshipful John Newcome, Roger Long, William Richardson, Robert Smith, Fra. Sawyer Parris, John Green, Kenrick Prescot, and Philip Yonge, respectively, D. D. being his assessors.

Me present. T. Bennett, Notary Publick.

The office of the
judge promoted by
Zach. Brooke, B.D.
against William
Waller, B. A.

Proclamation being made, Mr. Brooke and S. Waller both appeared. The vice-chancellor having deliberated with the said nine assessors, did by and with the assent, and consent of them all, pronounce and declare the said William Waller expelled this university.

Adjourned to Wednesday, 1st of July next, at three o'clock in the afternoon.

THO. KIPLING, doctor of divinity, and deputy regius professor of divinity in the university of Cambridge, maketh oath, and faith, that he hath carefully examined two several books belonging to the said university, and kept by the registrar thereof, the one of which books is on the back thereof marked "Act. Cur. 1690—1709;" and the other of which books is at the head of the first page thereof, intituled "Acts of Court, 1752." And that in the first of the said books are contained the several cases, judgments, sentences, and other proceedings as are set forth in the paper writing hereunto annexed marked with the letter (K); and which cases, and other proceedings, were, as this deponent believes, and as appears to him

him by an entry contained in the said first mentioned book, and in the second page next preceding that wherein the same cases are entered, were heard and determined in the year 1697. And this deponent further saith, that in the said last mentioned book, are contained the several cases, judgments, sentences, and other proceedings, as are set forth in the paper writing hereunto annexed, marked with the letter (L.)

Letter (K.)

Die Veneris, viz. 18 Martij, Coram Dr. James procanco.

presente me Jacobo Halman, Regro.

Dns. ex Officio,
c. Johem Latham.

Quib. &c. compar. Latham; and being charged that he was lately out of his colledge in the night, and that he went to houses of ill fame, in presentiâ partis fatentis alleg predict esse vera unde dns. juxt statuta suspended him ab omni gradu suscipiendo.

Officium Dni.
promotu. c. Tho.
Rutter et Rich.
Osborne.

Compar. Rutter et Osborne, whom Mr. Vice-chancellor charged for being out of their colledges at unseasonable houres in the night, and quarrellinge in the streets, in presentiâ partium fatentium allegat predict esse vera unde dns. juxt statuta suspended them both ab omni gradu suscipiendo.

No. IV.

Stile of proceedings taken from a book in possession of the
registry, called Ecclesiastical Causes and Censures.

The following is all that relates to Charke's case :

Coram domino doctore Bing, procanc. 5 die Feb. 1572,
assidentibus doctoribus Pern, Hawford, Kelk, Mey, Cha-
derton, Harvey, Ithel, Whitgift, Shepherd, Goad, and
Aldardge.

Sententia lata v.
Maj. Charke.

Quibus, &c. comparuit Wm. Charke
et interrogat. dno. procancellario de dua-
bus illis propositionibus prius illi objectis et in concione
sua habitis, viz. (stating the two propositions) unde do-
minus cum assensu prefectorum collegiorum prefat pro-
nunciavit D. Wm. Charke incidisse in poena statuti in ea
parte facti ideo excludend. a collegio suo de qua sententiâ,
D. Charke appellavit cui appellacio non deferend.

IN BROWN'S CASE.

Coram domino doctore Whitgift procanc. 24th Nov.
1573.

Sententia lata v.
Nich. Brown Soc. Col.
Trin.

Quibus, etc. comparuit, Ds Brown ;
and it goes on in nearly the same
as in Charke's case.

In

In MILAYNE's CASE.

Coram Dno. Doctore Bing, procancellario assistentibus doctoribus Pern, Hawford, Whitgift, Harvey, Majus, Shepherd, Legg.

Mr. Millen in artibus Mr. Socius Collegii venit coram dno. procancellario et assistentibus supernominatis qui interrogatus de quibusdam assertionibus a se prælatis in concione sua infra ecclesiam stæ Mariæ quarto die Oct. affirmavit se easdem protulisse deinde dominus procancellarius et assist. monuerunt ei ut retractaret easdem sed Millen recusavit unde Dnus. procancellarius de consensu præpositorum tunc pronunciavit D. Millen incidisse in poena statuti academici et ab academia expellendum decrevit.

In BARRET's CASE.

Coram venerabili viro Dn. Doctore S— deputato Doct. Duport, procancel. Cant. Doctoribus Goad, Tindal, Whitaker, Berral, Jegon, Preston, M. Chaderton et Clayton, præfectis collegiorum, 5 Jun. in præsentia me T. Smith.

Dom. Procanc. et
Cojudices prædicti ex
officio W. Barret in
artibus Mr. Soc. Coll.
Caii.

The entry then states the offence of preaching against the reformers, and the requisition to recant. There are no marks of originality, it being roughly copied, and fastened together bookways with the other papers.

In the cases of JOHNSON and BAMBRIDGE,

Dominus ex officio 23d Jan. 1588, Coram eodem Dno.
 v. Mag. Bambridge. procancell. assistentibus D. D. Pern,
 Tindal, Copcott, Legg et Bett, et in consistorio hora octa-
 va universitatis in præsentia Thomæ Brooke, Not. Pub.

Acta facta et gesta coram venerabili viro dno. Thoma
 Neville, S. T. P. atque universitatis Cant. procan. assisten-
 tibus tunc et ibidem nobilibus viris dnis. doctoribus Hill,
 Tindall, Copcott, Bing, Legg et Mrs. Andrew et Preston,
 9 die mensis Septemb. 1589, in præsentia Thomæ Smith,
 N. P. in consistorio universitatis.

The entries in this and Johnson's case consist of protests,
 explanations, canon law opinions, and as in Strype's
 annals.

On these imperfect entries indeed much cannot be
 grounded; but the history of the cases throws a light
 upon them; and as in the two full cases under the statute
 de concionibus produced by the promoter, there is an
 evident difference in the stile and whole proceedings,
 from the cases also produced by him, and clearly proved to
 belong to the vice-chancellor's court, the reader, it is pre-
 sumed, has had every thing laid before him which can en-
 able him to form a proper estimate of the question.

In page 142, are given by Dr. Kipling the cases of
 Latham and Rutter, referred to in page 79, which

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L

entirely

entirely overthrow his argument on the first statute given by Elizabeth on the power of the chancellor; for the vice-chancellor punishes without the consent of the heads, contrary to the first statute of Elizabeth.

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